

U. S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

JUL 10 2014

CHRIS R. JOHNSON, CLERK

BY

DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BUMBLE BEE FOODS, LLC,

Defendant.

Case No. 14-5218 JLH

**NOTICE OF REMOVAL OF CIVIL ACTION (FEDERAL QUESTION JURISDICTION,
28 U.S.C. § 1331, DIVERSITY JURISDICTION, 28 U.S.C. § 1441(b),
AND CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1332(d))**

Defendant Bumble Bee Foods, LLC ("Bumble Bee") hereby gives notice of removal of the above-captioned action, Case No. CV14-930-6, currently pending in the Circuit Court of Washington County, Arkansas, to the United States District Court for the Western District of Arkansas. Removal is based on 28 U.S.C. §§ 1332, 1332, 1441 and 1445.

As grounds for removal, Bumble Bee states the following:

I. BACKGROUND

1. This is a putative statewide class action challenging statements on the labels of certain Bumble Bee products, as defined in Paragraph 2 of the FAC ("Bumble Bee Products"). According to Plaintiff Ronald Bennett ("Bennett"), the Bumble Bee Products violated laws and regulations governing Omega-3 claims on food product labels.

2. On May 22, 2014, Bennett filed a "Class Action Complaint" ("Complaint") with the Clerk of the Circuit Court of Washington County, Arkansas (the "State Court Action"). The State Court Action was assigned Case No. CV-2014-930-6. Bennett's Complaint was not the first class action to be filed against Bumble Bee on these allegations.¹

¹ See *Ogden v. Bumble Bee Foods, LLC*, No. 12-CV-1828-LHK (N.D.Cal.); *McMahon v. Bumble Bee Foods, LLC*, No. 14-cv-03346 (N.D. Ill.) ("McMahon Action") and *Garrett v. Bumble Bee Foods, LLC*, No. 5:14-cv-2546-EJD (N.D. Cal.) (removed from the Superior Court of California) ("Garrett Action")

3. Bennett did not serve the Complaint on Bumble Bee. He filed a First Amended Class Action Complaint ("FAC") on June 4, 2014.

4. The FAC was first served on Bumble Bee on June 10, 2014.

5. The FAC asserts claims against Bumble Bee for violations of the Arkansas Deceptive Trade Practices Act ("ADTPA"); unjust enrichment; breach of implied warranty; breach of express warranty; and negligence arising out of Bumble Bee's alleged mislabeling of certain products. FAC, ¶¶ 56-100. The FAC is filed on behalf of Bennett and a putative class consisting of those persons in the State of Arkansas who purchased certain Bumble Bee food products labeled as "Rich in Natural Omega" or "Excellent Source Omega 3" at any time since May 22, 2009. *Id.* ¶ 46. Bumble Bee disputes Bennett's allegations.

6. Plaintiff alleges that he is a resident of Arkansas. FAC, ¶ 12.

7. Plaintiff alleges that Bumble Bee is a Delaware corporation with a principal place of business in California. FAC, ¶ 13. Bumble Bee is not, for purposes of diversity under 28 U.S.C. § 1332, a citizen of Arkansas.

II. DIVERSITY: STATUTORY REQUIREMENTS – CLASS ACTION FAIRNESS ACT

A. This Court Has Jurisdiction

8. Pursuant to 28 U.S.C. § 1332, as amended by CAFA, a putative "class action" such as the case at bar may be removed to the appropriate United States District Court if (1) any member of the putative class is a citizen of a state different from any defendant, and (2) the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).

9. In addition, the Action is a "class action" within the meaning of CAFA because it is a civil action filed under Arkansas Rule of Civil Procedure 23 (*see* FAC, ¶ 46) – Arkansas's analog to Federal Rule of Civil Procedure 23 and a "rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a).

B. There Is Diversity of Citizenship

10. The requisite diversity of citizenship exists under 28 U.S.C. §§ 1332(d)(2) and (d)(7). Bumble Bee is a citizen of California and Delaware. FAC, ¶ 13. By contrast, Bennett is, upon information and belief, a citizen of the state of Arkansas, and seeks to represent a class of Arkansas purchasers. *See* FAC, ¶ 12. Thus, based upon Bennett's own allegations, it is evident that Bumble Bee is a citizen of a state (California and Delaware) different from at least one class member (Arkansas). The diversity of citizenship requirement of 28 U.S.C. § 1332(d)(2) and (d)(7) is thus met.

C. The Amount in Controversy Exceeds \$5 Million

11. Although Bennett does not plead a specific damages amount, and alleges that the amount in controversy will not exceed \$4,999,999.00, this attempt to bind the putative class is not valid. *See Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1350 (2013); *Basham v. American Nat. County Mut. Ins. Co.*, No. 4:12-CV-4005, 2013 WL 5755684, at *2 (W.D. Ark. Oct. 23, 2013) (stating that *Standard Fire* "definitively states that such stipulations may not prevent removal under CAFA"). When the amount at issue as a result of the claims of all members of the putative class are properly aggregated, there is more than \$5,000,000 in controversy in this action. 28 U.S.C. § 1332(d)(6). Moreover, the question on removal is not what damages the plaintiff will recover, but what amount is "in controversy" between the parties. *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005).

12. A party seeking to remove a case under CAFA must establish the amount in controversy by a preponderance of the evidence. *Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013). A removing defendant's burden of describing how the controversy exceeds \$5 million constitutes a pleading requirement, not a demand for proof. *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944-45 (8th Cir. 2012). Once a removing party has established by a preponderance of the evidence that the jurisdictional minimum is satisfied, remand is only proper if the plaintiff can establish to a legal certainty that the claim is for less than the requisite amount. *Brill*, 427 F.3d at 449.

13. While Bumble Bee denies that Bennett or any putative class member is entitled to recover any amount, and specifically denies that Bennett or any putative class member is entitled to the relief in the various forms sought, given the FAC's allegation of an Arkansas statewide class of thousands of individuals, the relief sought and the potential effect a judgment against Bumble Bee would have in lawsuits in other states, the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

14. In determining the amount in controversy, all potentially applicable damages, including statutory and punitive damages and attorneys' fees, are properly considered. 28 U.S.C. § 1332(d)(6); *see, e.g., Powell v. State Farm Fire & Cas. Co.*, 2010 U.S. Dist. LEXIS 6796, at *2-3 (W.D. Ark. Jan. 27, 2010); *Magee v. Advance America Servicing of Ark., Inc.*, 2009 WL 890991, at *4 (W.D. Ark. Apr. 1, 2009).

15. As noted, Bennett purports to sue on behalf of himself and "[a]ll persons who purchased [Bumble Bee Products] in Arkansas, since May 22, 2009." FAC, ¶ 46. Bennett further alleges that "it is estimated that the [putative class is] in the thousands, and that joinder of all Class members is impracticable." *Id.* at ¶ 49.

16. As relief in this lawsuit, Bennett pleads that he and the putative class are entitled to "damages, restitution or disgorgement . . . including all monetary relief to which Plaintiff and the Class are entitled." FAC, ¶¶ 68, 71, 82, 94, 100, *ad damnum* clause. Bennett also alleges that he and the putative class members are "entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas any money paid for the Bumble Bee Product." *Id.* Plaintiff thus seeks a refund of the full retail purchase price paid for the Bumble Bee Products.

1. Damages, Restitution and Disgorgement

17. Bumble Bee's research reveals that it sold 1,137,000 units of Bumble Bee Products, with a total wholesale value of \$1,615,506, to stores in Arkansas between May 22,

2009 and September 30, 2012.² Declaration of Bryan Smith ("Smith Decl."), ¶¶ 3-4, attached hereto as Exhibit A. Of course, Bennett seeks to recover on behalf of himself and his putative class members the retail value of the Bumble Bee Products, which would be even greater.

2. Punitive Damages

18. Punitive damages are included in the amount in controversy calculation. *See Allisson v. Security Ben. Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir. 1992). Bennett states that he will "seek[] the maximum possible recovery for the Class" (FAC, ¶ 52) and "all monetary relief to which Plaintiff and the Class are entitled (*id.*, *ad damnum clause*). The FAC includes claims under the ADTPA, in addition to allegations of fraudulent and deceptive conduct, both of which expose Bumble Bee to punitive damages.

19. While Bumble Bee denies engaging in any conduct that would give rise to punitive damages, Bennett's factual allegations must be accepted as true for purposes of analyzing the amount in controversy. *See, e.g., Wiemers v. Good Samaritan Soc'y*, 212 F. Supp. 2d 1042, 1048 (N.D. Iowa 2002).

20. Bennett's allegations of deceptive and misleading labeling sound in fraud, and the FAC alleged "fraudulent" conduct in the marketing and sale of the Bumble Bee Products. FAC, ¶ 5. Specifically, the FAC alleges that Bumble Bee made "misrepresentations and material omissions" (*id.*, ¶ 43), engaged in "false, misleading and unlawful advertising, marketing and labeling of the Bumble Bee Product (*id.*, ¶ 57) and engaged in "deceptive" trade practices (*id.*, ¶ 62). Bennett further alleges that he reviewed the labels on the Bumble Bee Products, reasonably relied on the labels in purchasing the products and was deceived into buying the products. *Id.*, ¶ 5.

21. Under Arkansas law, these allegations could form the basis for a possible fraud claim. *See Harrill & Sutter P.L.L.C. v. Kosin*, 424 S.W.3d 272, 275, 2012 Ark. 385 (Ark. 2012) (stating that the elements of a misrepresentation or fraud claim are that the defendant made a false representation of material fact that it knew was false, the defendant intended to induce

² Since Bumble Bee does not sell directly to end-use consumers in Arkansas, it does not maintain retail sales information.

reliance by the plaintiff, that the plaintiff justifiably relied on the representation, and that the defendant suffered damages as a result of the misrepresentation); *Ray Dodge, Inc. v. Moore*, 479 S.W.2d 518, 522 (Ark. 1972).

22. Arkansas law permits the recovery of punitive damages on a fraud claim. *Curtis Lumber Co. v. La. Pac. Corp.*, 618 F.3d 762, 785 (8th Cir. 2010). Punitive damages can be awarded in a case, and included in calculating the amount in controversy under CAFA, regardless of whether the named plaintiff requests them in the complaint. *Basham v. American Nat. County Mut. Ins. Co.*, 2013 WL 5755684, at *6 (W.D. Ark. Oct. 23, 2013); *Knowles v. Standard Fire Ins. Co.*, 2013 WL 3968490, at *10 (W.D. Ark. Aug. 2, 2013).

23. Arkansas courts have permitted punitive damages of up to 10 times compensatory damages. *Ross v. Kansas City Power & Light Co.*, 293 F.3d 1041 (8th Cir. 2002) (upholding 10-1 punitive damages ratio); *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568 (8th Cir. 1997) (same); *Superior Federal Bank v. Jones & Mackey Const. Co.*, 219 S.W.3d 644, 653 (Ark. Ct. App. 2003) (upholding 17.6-1 punitive damages ratio).

24. Applying a 2 to 10 times multiplier for punitive damages recognized under Arkansas law to the \$1,615,506 actual damages figure puts an additional \$3,231,012 to \$16,155,060 in controversy.

3. Attorneys' Fees

25. Bennett pleads a purported cause of action for violation of the ADTPA. FAC, ¶¶ 56-68.

26. The ADTPA permits the recovery of "reasonable attorney's fees" in suits by private litigants who suffer actual damages or injury as a result of an offense or violation of the statute's provisions. A.C.A. § 4-88-113(f). Accordingly, the FAC, taken as true, asserts a factual basis for the award of attorneys' fees.

27. In calculating the amount in controversy for purposes of CAFA jurisdiction, courts have considered attorneys' fees of 30% and above of the damages that a class may recover. See *Frederico v. Home Depot*, 507 F.3d 188, 199 (3d Cir. 2007); *Zellner-Dion v.*

Wilmington Fin., Inc., 2012 U.S. Dist. LEXIS 99986, at *8-9 (D. Minn. July 19, 2012); *DiPonzio v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 74158, at *7-8 (N.D.N.Y. July 11, 2011).

28. As noted, for purposes of determining the amount in controversy, the FAC asserts actual damages for violations of the ADTPA totaling some \$1,615,506. As noted above, punitive damages in the range of 2 to 10 times add an additional \$3,231,012 to \$16,155,060 to the amount in controversy, for a total of between \$4,846,518 and \$17,770,566. A potential attorneys' fee award, calculated at the rate of 30%, would add an additional \$1,453,955 to \$5,331,170 to the amount in controversy. Adding damages, punitive damages and attorneys' fees yields an amount in controversy of between \$6,300,473 and \$23,101,736.

4. Potential Value of Collateral Estoppel

29. As demonstrated above, the amount in controversy exceeds the \$5 million jurisdiction threshold. But, in addition to those amounts in controversy identified above, the Court should also include the potential collateral value a judgment against Bumble Bee would have in other lawsuits (although Bumble Bee does not concede that collateral estoppel would in fact apply). *See, e.g., Huffman v. Alderson*, 335 Ark. 411, 414-415 (1998) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim").

30. For Bennett to prevail on his claims, the Court would have to conclude that the Bumble Bee Products (as defined in Paragraph 2 of the FAC) "were not capable of being sold or possessed legally, and [] have no economic value." FAC, ¶¶ 66, 71, 77, 80, 99. If the Court made such findings and entered judgment against Bumble Bee, then such a judgment could have collateral estoppel effect against Bumble Bee in other lawsuits. *See* S. Rep. No. 109-14 at 42-43 (under CAFA, "the federal court should include in its assessment the value of all relief and benefits that would logically flow from the granting of the declaratory relief sought by the claimants. For example, a declaration that a defendant's conduct is unlawful or fraudulent will

carry certain consequences, such as the need to cease and desist from that conduct, that will often “cost” the defendant in excess of \$5,000,000.”).

31. For instance, another Arkansas plaintiff could file a putative class action as to other Bumble Bee products with the challenged Omega-3 statements, and assert collateral estoppel against Bumble Bee. Under that scenario, Bumble Bee would face additional damages alone of \$4,856,238, since Bumble Bee sold 3,748,400 units of Bumble Bee products with the challenged Omega-3 statements (exclusive of the Bumble Bee Products) with a total wholesale value of \$4,856,238 to stores in Arkansas between May 22, 2009 and September 30, 2012. Ex. A, Smith Decl., ¶¶ 5-6.

32. Moreover, the plaintiffs in the Garrett Action could use a judgment here as collateral estoppel against Bumble Bee in that action to recover damages and restitution for Bumble Bee’s alleged sale of misbranded products. Under plaintiffs’ theory in the Garrett Action (which is identical to Bennett’s here), Bumble Bee would face a judgment just far in excess of \$5,000,000, since Bumble Bee sold 111,795,558 units of Bumble Bee Products with a total wholesale value of \$146,271,642 to stores in California between May 22, 2009 and September 30, 2012. Exhibit A, Smith Decl., ¶¶ 3-4.

33. In light of the above, the amount in controversy in this case greatly exceeds \$5,000,000.

III. FEDERAL QUESTION REMOVAL

34. This Court possesses original jurisdiction in all cases arising under the laws of the United States. 28 U.S.C. § 1331. Federal question jurisdiction exists because Bennett’s claims will necessitate the adjudication of substantial, disputed questions of federal law. *Id.*

35. Federal question jurisdiction is available in actions involving only state-law claims where those claims necessarily involve the resolution of underlying questions of federal law. *See, e.g., Grable & Sons Metal Prods., Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005) (affirming federal-question jurisdiction over state quiet-title action based on need to resolve predicate issue under federal Internal Revenue Code); *California ex rel. Lockyer v.*

Dynegy, Inc., 375 F.3d 831, 841 (9th Cir. 2004) (federal question removal jurisdiction is proper where state lawsuit turns upon defendant's compliance with a federal regulation).

36. Bennett's claims necessitate the resolution of substantial, disputed questions of federal law, including the meaning and application of the FDCA and food labeling regulations promulgated by the United States Food and Drug Administration ("FDA"), which has the authority to implement the FDCA and regulate food labeling. This is because Bennett's claims expressly challenge Omega-3 statements on Bumble Bee Products that are governed by the FDCA and the FDA's regulations.

37. Specifically, Bennett's claims are based on numerous allegations that labels on Bumble Bee Products were false and misleading because:

- they violate "[a]pplicable regulations adopted by Arkansas law" that (a) "provide specific requirements for nutrient content claims that specify that where a particular nutrient does not have an established daily value (DV), food producers may not state on their food labels that their food product is a 'good source' of the nutrient, or use a comparable phrase, such as 'excellent source' or 'rich in'" (FAC, ¶ 24) and (b) "regulate Omega 3 claims as a particular type of nutrient content claim. Because Omega 3 does not have an established daily value (DV), food producers may not state on their labels that their products are a 'good source' or 'Excellent source' of Omega 3, or use a synonym conveying the same message" (*id.*, ¶ 25).
- "Defendant has misbranded its products by misrepresenting that its products are an 'excellent source' of Omega 3 or 'rich in' Omega 3. The Bumble Bee Products claim to be an 'excellent source or Omega 3' or 'naturally rich in Omega 3,' but they fail to disclose that Omega 3 has no established Daily Value." *id.*, ¶ 26.
- "Plaintiff was misled by Defendant's misrepresentations that the Defendant's products he was purchasing qualified for the nutritional claims being made and met the minimum nutritional thresholds to make such claims." *id.*, ¶ 28.

- Bumble Bee has used the terms 'Rich in Natural Omega 3' and/or 'Excellent source of Omega 3' to represent that the Bumble Bee Products contained minimum levels of Omega 3 nutrient content. Bumble Bee Products do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the Reference Daily Intake ("RDI") or the Daily Reference Value ("DRV") of a nutrient with a recognized RDI per reference amount customarily consumed." *id.*, ¶ 85.

38. Bumble Bee's statements could have violated Arkansas state law only if they violate federal law. So the determination of the validity of Bennett's claims depends upon an interpretation of the FDCA and food labeling regulations promulgated by the FDA, which has the authority to implement the FDCA and regulate food labeling.

39. Moreover, Bennett's discovery requests that he served with the FAC (*see Exhibit B*) demonstrate that he believes that questions of federal law are relevant to the issues in his case. *See Ark. R. Civ. P. 26(b)(1)* ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the issues in the pending action"). For example, Bennett seeks discovery regarding:

- Bumble Bee's "labels," defined as "the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2"
- "All communications with the FDA relating to [Bumble Bee's] statements concerning health benefits for [Bumble Bee's] food products"
- "All communications between [Bumble Bee] and the FDA concerning the Product Claims"
- "All documents concerning [Bumble Bee's] efforts to comply with the FDCA"
- "All documents concerning regulatory compliance actions concerning the product Claims including, but not limited to, FDA warning letters regarding the Product Claims made by [Bumble Bee] and other companies"

- “All documents relating in any way to the issue of compliance with federal and Arkansas regulations relating to labeling the relevant Food Products”
- “All documents relating in any way to any internal analyses of [Bumble Bee’s] Product Claims for compliance with federal and Arkansas regulations”
- “Identify each person responsible and/or has the responsibility for ensuring that [Bumble Bee’s] labels were and are in compliance with federal and Arkansas labeling laws and regulations”
- “Identify [Bumble Bee’s] departments, divisions, business units, third parties, attorneys, or agents who are (or have been) responsible for or otherwise involved in . . . compliance with all Arkansas and federal labeling laws and regulations”
- “Describe and explain, in detail, any regulatory compliance action undertaken by the FDA concerning [Bumble Bee], [Bumble Bee’s] Food Products, or the Product Claims and identify the person(s) most knowledgeable about such action”
- “If [Bumble Bee] contends that [Bumble Bee’s] labels do not violate federal or Arkansas law, describe the factual basis for this contention”

40. For Bennett to prove an entitlement to relief on his theory that Bumble Bee misbranded its products by making allegedly impermissible “excellent source” and “rich in” Omega 3 claims, Bennett will have to prove that Bumble Bee violated the specific labeling requirements set forth in the FDA’s regulations, including 21 C.F.R. § 101.54. Section 101.54 sets forth the specific requirements for making an “excellent source” or “rich in” claim, not Arkansas state law.

41. Resolving Bennett’s claims also will require, among other things, an interpretation of 21 U.S.C. § 343(r)(2)(G) of the FDCA, which permits companies to make nutrient content claims based upon an authoritative statement of a scientific body after notification to the FDA, as well as the FDA’s recent final rule regarding nutrient content claims for Omega-3s on food product labels. *See Food Labeling: Nutrient Content Claims; Alpha-Linolenic Acid,*

Eicosapentaenoic Acid, and Docosahexaenoic Acid Omega-3 Fatty Acids, U.S. FDA Final Rule, 79 Fed. Reg. 23,262 (Apr. 22, 2014).

42. While Bennett seeks to enforce unspecified “applicable regulations” through Arkansas’s Food, Drug and Cosmetic Act and other Arkansas state laws, those laws say nothing about the labeling claims Bennett challenges here. Because there are no Arkansas state law equivalents to the relevant FDA standards Bennett challenges with respect to “excellent source” and “rich in” Omega-3 label statements, the FAC necessarily depends upon federal law. *In re Zyprexa Prods. Liab. Litig.*, 2008 WL 398378, at *5 (E.D.N.Y. Feb. 12, 2008) (absence of state-law equivalent standard evidences necessity of federal law); *Pickern v. Best W. Timber Cove Lodge Marina Resort*, 194 F. Supp. 2d 1128, 1132 n.5 (E.D. Cal. 2002) (“Simply by incorporating the [federal act] into state law, state legislatures cannot divest the federal courts of original jurisdiction over state claims that are, for all intents and purposes, federal [] claims.”).

43. Moreover, a state law claim does not exist where it is “in substance (even if not in form) a claim for violating the FDCA – that is, when the state claim would not exist if the FDCA did not exist.” *Riley v. Cordis, Corp.*, 625 F. Supp. 2d 769, 777 (D. Minn. 2009); *see also County of Santa Clara v. Astra USA Inc.*, 401 F. Supp. 2d 1022, 1025 (N.D. Cal. 2005) (federal jurisdiction lies “when an issue of federal law undergirds a claim otherwise based in state law.”).

44. There is a significant federal interest in the adjudication of such disputes in a federal forum. *Grable*, 545 U.S. at 314. Furthermore, the exercise of federal question jurisdiction will not “disturb[] any congressionally approved balance of federal and state judicial responsibilities.”

45. Accordingly, the Court’s exercise of federal question jurisdiction is appropriate because Bennett’s state law claims necessarily involve the resolution of substantial, disputed questions of federal law, including whether the challenged label statements were permitted by and complied with the FDCA and FDA regulations.

IV. SUPPLEMENTAL JURISDICTION

46. To the extent not otherwise provided for above, supplemental jurisdiction exists as to all other claims as set forth in the FAC, pursuant to 28 U.S.C. § 1367.

47. A court may exercise supplemental jurisdiction “over all other claims that are so related to claims within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). This standard is satisfied, because Bennett’s claims are so related to claims as to which there is federal jurisdiction that they form parts of the same case or controversy. In addition, Bennett’s claims do not raise novel or complex issues of state law and do not substantially predominate over the federal claims. *See* 28 U.S.C. § 1367(c).

48. There is a significant interest in having these and other federal issues adjudicated in a federal forum, and removal of this action will not disrupt any balance between federal and judicial responsibilities over related disputes. This is especially true because many of these same claims, including breach of warranty, unjust enrichment and negligence claims, were previously adjudicated in this Court in the Ogden Action and/or are the subject of the pending federal court McMahon and Garrett Actions.

49. Accordingly, to the extent necessary, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

V. PROCEDURAL REQUIREMENTS AND LOCAL RULES

50. Removal to Proper Court. This Court is part of the “district and division” embracing the place where this action was filed – Fayetteville, Arkansas. 28 U.S.C. § 1446(a).

51. Removal is Timely. Bumble Bee is entitled to remove the State Court Action at any time up to thirty days after service of the initial pleading setting forth the claim for relief on which the action is based. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). The Complaint in the State Court Action was filed on or about May 22, 2014, but was not served on Bumble Bee. The FAC was filed on or about June 4, 2014. Bumble Bee’s registered agent, the Corporation Service Company (“CSC”), was served with the Summons and FAC on June 10, 2014. *See Exhibit B* (Service of Process Transmittal).

This Notice of Removal is being filed timely with the United States District Court for the Western District of Arkansas on July 10, 2014, within 30 days after service of the State Court Action Summons and FAC on CSC.

52. Pleadings and Process. Attached as Exhibit B is a copy of all process, pleadings, and orders served upon Bumble Bee in the State Court Action. *See* 28 U.S.C. § 1446(a). Bumble Bee has paid the appropriate filing fee to the Clerk of this Court upon the filing of this Notice.

53. Notice. Attached as Exhibit C is a copy of a Notice of Filing of Notice of Removal, pursuant to 28 U.S.C. § 1446(d), which Bumble Bee will file with the Clerk of the Circuit Court of Washington County, Arkansas.

54. Consent to Removal. All defendants have consented to removal of this action.

55. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

56. Based upon the foregoing, this Court has jurisdiction over this matter, and the claims may be removed to this Court.

VI. REQUEST FOR ADDITIONAL ARGUMENTS AND EVIDENCE, IF NECESSARY

57. In the event that Bennett files a request to remand, or the Court considers remand *sua sponte*, Bumble Bee respectfully requests the opportunity to submit additional arguments and/or evidence in support of removal.


58. In filing this Notice of Removal, Bumble Bee expressly preserves and does not waive any defenses that may be available to it.

WHEREFORE, this action should proceed in the United States District Court for the Western District of Arkansas, Fayetteville Division, as an action properly removed thereto.

Dated: July 10, 2014

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CERTIFICATE OF SERVICE

On July 10, 2014, I filed the above and foregoing Notice of Removal and sent a copy via First Class, U.S. Mail, to plaintiff's attorneys at the following address:

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By: 

Amy Lee Stewart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BUMBLE BEE FOODS, LLC,

Defendant.

Case No.

DECLARATION OF BRYAN SMITH

Removed from Circuit Court of Washington
County, Arkansas
Case No. CV14-930-6



I, Bryan Smith, hereby depose and state as follows:

1. I am a Trade Marketing Technology Manager with Bumble Bee Foods, LLC (“Bumble Bee”). I make this Declaration in support of Bumble Bee’s Notice of Removal in the above-captioned action.

2. This Declaration is based upon my personal knowledge, and/or review of non-privileged business records and information kept in the regular course of Bumble Bee’s business and available to me in the course of my duties at Bumble Bee.

3. I conducted a review of Bumble Bee’s non-privileged business records concerning sales of the following Bumble Bee products in the United States between May 22, 2009 and September 30, 2012 (the “subject time period”): Bumble Bee Tiny Shrimp, Bumble Bee Lunch on the Run Tuna Salad, Bumble Bee Chunk White Albacore Tuna in Water, Bumble Bee Chunk White Albacore Tuna in Oil, Bumble Bee Solid White Albacore Tuna in Water, Bumble Bee Chunk Light Tuna in Water and Bumble Bee Chunk Light Tuna in Oil (“Bumble Bee Products”).

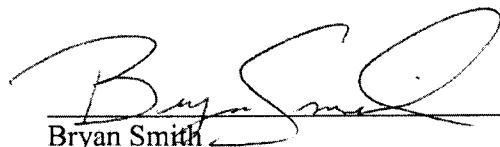
4. Those records reveal that, during the subject time period, Bumble Bee sold (a) 1,137,000 units of Bumble Bee Products with a total wholesale (not retail) value of \$1,615,506 to stores in Arkansas; and (b) 111,795,558 units of Bumble Bee Products with a total wholesale (not retail) value of \$146,271,642 to stores in California.

5. I also conducted a review of Bumble Bee’s non-privileged business records concerning sales of Bumble Bee products with “Excellent Source Omega-3” statements (exclusive of the Bumble Bee Products) in Arkansas during the subject time period.

6. Those records reveal that, during the subject time period, Bumble Bee sold 3,748,400 units of Bumble Bee products (exclusive of the Bumble Bee Products) with a total wholesale (not retail) value of \$4,856,238 to stores in Arkansas between May 22, 2009 and September 30, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best my knowledge and belief.

Executed this 10th day of July, 2014.


Bryan Smith



**Service of Process
Transmittal**

06/10/2014

CT Log Number 525114924

TO: Jill Irvin, General Counsel
Bumble Bee Foods LLC
280 10th Avenue
San Diego, CA 92101

RE: Process Served in Delaware

FOR: Bumble Bee Foods, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ronald A. Bennett Jr., etc., Pltf. vs. Bumble Bee Foods, LLC, Dft.

DOCUMENT(S) SERVED: Letter, Summons and Notice, Complaint(s), Exhibit(s), First Set of Interrogatories, First Set of Request

COURT/AGENCY: Washington County : Circuit Court, AR
Case # CV20149306

NATURE OF ACTION: Product Liability Litigation - Complaint has been filed against defendant for the violations committed by them under Arkansas Laws of food labeling

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Certified Mail on 06/10/2014 postmarked on 06/05/2014

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 30 days

ATTORNEY(S) / SENDER(S): Kenneth R. Shemin
Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway
Suite 603
Rogers, AR 72758
479-845-3305

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 770268142187
Image SOP
Email Notification, Jill Irvin irvinj@bumblebee.com
Email Notification, Craig Forman craig.forman@bumblebee.com
Email Notification, Lorna Krouss lorna.krouss@bumblebee.com

SIGNED: The Corporation Trust Company

PER: Gretchen McDougal

ADDRESS: 1209 Orange Street
Wilmington, DE 19801

TELEPHONE: 302-658-7581



Page 1 of 1 / DK

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Shenim Law Firm, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758



7013 2250 0000 2914 6536

neopost
06/05/2014

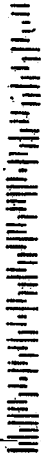
US POSTAGE

\$18.00⁰⁰



ZIP 72758
041L10226953

The Corporation Trust Company
A/S for Bumble Bee Foods, LLC
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



SHEMIN LAW FIRM
A PROFESSIONAL LIMITED LIABILITY COMPANY
3333 PINNACLE HILLS PARKWAY, SUITE 603
ROGERS, ARKANSAS 72758
TELEPHONE (479) 845-3305
FACSIMILE (479) 845-2198

KENNETH R. SHEMIN

Ken@sheminlaw.com

June 5, 2014

Via U.S. Certified Mail

The Corporation Trust Company
Agent of Service for Bumble Bee Foods, LLC
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Re: Ronald A. Bennett, Jr. v. Bumble Bee Foods, LLC

Dear Sir and/or Madam:

Pursuant to the enclosed Summons, Complaint and First Amended Complaint, please be advised that a lawsuit has been filed against you. In connection with that lawsuit, please find enclosed Plaintiff's First Set of Interrogatories as well as Plaintiff's First Set of Requests for Production of Documents.

Respectfully,



Kenneth R. Shemin

KRS/gdh

Enclosure(s)

cc: Client

SUMMONS
IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

PLAINTIFF: **Ronald A. Bennett Jr., individually and on behalf of all others similarly situated**

v.

Case No. CV-2014- 930-6

DEFENDANT: **Bumble Bee Foods, LLC**

PLAINTIFF'S ATTORNEY: **Kenneth R. Shemin**
 Shemin Law Firm, PLLC
 3333 Pinnacle Hills Parkway
 Suite 603
 Rogers, AR 72758
 Office: (479) 845-3305
 Facsimile: (479) 845-2198

STATE OF ARKANSAS TO DEFENDANT: **Bumble Bee Foods**

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements.

 A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.

 B. It must be filed in the court clerk's office within **thirty (30)** days from the day you were served with this summons.

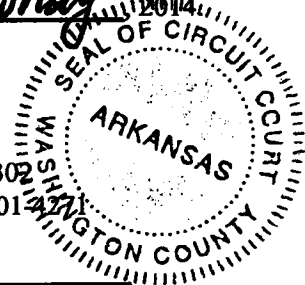
3. If you desire to be represented by an attorney, you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

4. **ADDITIONAL NOTICES:**

WITNESS MY HAND AND SEAL OF THE COURT this 22 day of May, 2014.

Mr. Kyle Sylvester
Circuit Court Clerk
Courthouse
280 N. College Ave., Ste. 302
Fayetteville, Arkansas 72701-4271

By: DM
Deputy Clerk



STATE OF ARKANSAS)

)SS.

COUNTY OF _____)

On this _____ day of May, 2014, I have duly served the within writ, by delivering a copy and stating the substance thereof, to the within named _____.

Sheriff

Deputy Sheriff

Process Server

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

Ronald A. Bennett Jr., individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

BUMBLE BEE FOODS, LLC

Defendant.

CLASS ACTION COMPLAINT

Case No. **CV14-930-6**

JURY TRIAL DEMANDED

FILED FOR RECORD
MAY 22 PM 4:11
WASHINGTON COUNTY
CIRCUIT CLERK
K. SYLVESTER

Plaintiff, Ronald A. Bennett Jr. ("Plaintiff") brings this lawsuit against Defendant Bumble Bee Foods, LLC ("Bumble Bee" or "Defendant"). In order to remedy the harm arising from Defendant's illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on behalf of himself and a statewide class of Arkansas consumers who purchased the Bumble Bee Products labeled as "Excellent Source Omega 3." These products are referred to herein as "Misbranded Food Products" and/or the "Bumble Bee Products."¹

DEFINITIONS

1. "Class Period" is May 22, 2009 to the present.
2. Over the last five years, Plaintiff purchased Bumble Bee Tiny Shrimp, and Bumble Bee Lunch on the Run Tuna Salad (hereinafter the "Bumble Bee Products," "Misbranded Food Products" and/or "Purchased Products"). Sample pictures of the Bumble Bee Products are attached at Exhibit 1.
3. "Misbranded Food Products" and/or "Bumble Bee Products" are the Purchased Products identified herein and sold during the Class Period. The Bumble Bee Products sold during the Class Period ("Class Products") are listed below:

¹ This case includes only the "Purchased Products."

- Bumble Bee Tiny Shrimp
- Bumble Bee Lunch on the Run Tuna Salad

SUMMARY OF THE CASE

4. Defendant packaged and labeled the Bumble Bee Products in violation of Arkansas law. These violations render the Bumble Bee Products “misbranded.” Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value and are legally worthless.

5. The labels on the Bumble Bee Products – aside from being unlawful under the Arkansas law – are also misleading, deceptive, unfair and fraudulent. Plaintiff reviewed the labels on the respective Bumble Bee Products that he purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products. The very fact that Defendant sold such illegal Bumble Bee Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the products. Plaintiff relied upon the Defendant’s implied representation that Defendant’s products were legal that arose from Defendant’s material omission of the facts that its products were in fact, actually illegal.

6. Plaintiff did not know, and had no reason to know, that Defendant’s Bumble Bee Products were misbranded under Arkansas law and that the products bore misleading food labeling claims, despite failing to meet the requirements to make those food labeling claims. Plaintiff did not know, and had no reason to know, that Defendant’s product labels were false and misleading.

7. Arkansas law requires truthful, accurate information on the labels of packaged

foods. The law is clear: misbranded food cannot legally be sold or possessed. Misbranded food has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price.

8. Arkansas law regulates the content of labels on packaged food. Under Arkansas law, food is “misbranded” if “its labeling is false or misleading in any particular,” or if it does not contain certain information on its label or its labeling. A.C.A § 20-56-206.

9. Misbranding reaches not only false and untruthful claims, but also those claims that are misleading.

10. If manufacturers, like Defendant, are going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

11. Under Arkansas law, Defendant’s food labeling practices are both (i) unlawful and (ii) deceptive and misleading to consumers.

PARTIES

12. Plaintiff, Ronald A. Bennett Jr., is a resident of Fayetteville, Washington County, Arkansas, who purchased Bumble Bee Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the “Class Period”).

13. Defendant Bumble Bee Foods, LLC is a Delaware corporation doing business in the State of Arkansas and throughout the United States of America. Bumble Bee’s principal place of business is 9655 Granite Ridge Dr., Suite 100, San Diego, CA 92123.

14. Defendant sells its food products to consumers through grocery and other retail

stores throughout Arkansas.

JURISDICTION AND VENUE

15. This Court has jurisdiction pursuant to Ark. Const., Amend. 80, § 6, and A.C.A. § 16-13-201(a). This Court also has jurisdiction pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

16. This Court has personal jurisdiction over Defendant, Bumble Bee, pursuant to A.C.A. § 16-4-101. At all times material to this action, Defendant was conducting business in the State of Arkansas. The Plaintiff purchased product sold and manufactured by the Defendant in the State of Arkansas and part of the transactions which give rise to this action took place in Pulaski County, Arkansas.

17. Venue is proper in this judicial district pursuant to A.C.A. § 16-55-213, *et al*, on the grounds that Defendant's misconduct occurred, in part, in Pulaski County.

18. The named Plaintiff and the Class Members assert no federal question. The state law causes of action asserted herein are not federally pre-empted.

19. The named Plaintiff and the Class Members assert that the aggregate amount in controversy will not exceed the sum or value of \$4,999,999.00, including compensatory damages, and restitution. The aggregate amount in controversy of the Class Members' claims does not and will not exceed \$4,999,999.00, excluding interest. No Class Member has a claim which exceeds \$74,999.00, including compensatory damages, and restitution.

FACTUAL ALLEGATIONS

A. Arkansas Laws Regulate Food Labeling

20. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

21. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

B. Defendant's Food Products are Misbranded with an Unlawful Omega 3 Nutrient Content Claim

22. Defendant's products are illegally misbranded because their labeling contains the unauthorized statement "Excellent Source of Omega 3."

23. Regulations adopted by Arkansas law provide specific requirements for nutrient content claims that specify that where a particular nutrient does not have an established daily value (DV), food producers may not state on their food labels that their food product is a "good source" of the nutrient, or use a comparable phrase, such as "excellent source" or "rich in."

24. Applicable regulations adopted under Arkansas law regulate Omega 3 claims as a particular type of nutrient content claim. Because Omega 3 does not have an established daily value (DV), food producers may not state on their labels that their products are a "good source" or "Excellent source" of Omega 3, or use a synonym conveying the same message.

25. Defendant has misbranded its products by representing that its products are an "excellent source" of Omega 3. The Bumble Bee Products claim to be an "excellent source of Omega 3," but they fail to disclose that Omega 3 has no established Daily Value. Thus, these products violate the applicable regulations under Arkansas law.

26. A reasonable consumer would consider these representations when deciding to purchase Defendant's products. Defendant's utilization of unlawful nutrient content claims renders the labels of these products false and misleading. The failure to comply with the labeling requirements renders Defendant's products misbranded as a matter of Arkansas law. Misbranded

products cannot be legally sold or possessed and are therefore, legally worthless.

27. Plaintiff read the Omega 3 nutrient content claims on the Defendant's Misbranded Food Products and relied on the Omega 3 nutrient content claims when making his purchase decisions. Plaintiff was misled by Defendant's misrepresentations that the Defendant's products he was purchasing qualified for the nutritional claims being made and met the minimum nutritional thresholds to make such claims. Plaintiff would not have purchased these products had he known that the products did not in fact qualify for the nutritional claims being made and failed to meet the minimum nutritional thresholds to make such claims.

28. Plaintiff was misled, by Defendant's unlawful labeling practices and actions, into purchasing products that he would not have otherwise purchased had he known the truth about those products.

29. Bumble Bee Tiny Shrimp and Bumble Bee Lunch on the Run Tuna Salad are both labeled "Excellent Source Omega 3." These Purchased Products bear an unlawful Omega 3 nutrient content claim.

30. Exemplar labels of the Purchased Products are provided in Exhibit 1. These exhibits are true, correct and accurate photographs of Bumble Bee labels. At all times during the Class Period, the above listed Bumble Bee Products contained an unlawful Omega 3 nutrient content claim.

C. Defendant has Knowingly Violated Arkansas Law

31. Defendant has violated the Arkansas Food, Drug and Cosmetic Act (§ 20-56-201, *et. seq.*), which makes it unlawful to disseminate false or misleading food advertisements or statements on products and product packaging, labeling or any other medium used to directly or indirectly induce the purchase of a food product.

32. Defendant has violated A.C.A § 20-56-215 which makes it unlawful to

manufacture, sell, deliver, hold or offer to sell any misbranded food.

33. Defendant's Misbranded Food Products are misbranded under Arkansas law because they purport to be or are represented to be for special dietary uses, and their labels fail to bear information concerning their vitamin, mineral, and other dietary properties that applicable regulations and laws have prescribed as necessary in order to fully inform purchasers as to their value for such uses.

D. Plaintiff Purchased Defendant's Misbranded Food Products

34. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

35. Plaintiff read and reasonably relied on the labels on Defendant's Purchased Products before purchasing them as described herein. Plaintiff relied on Defendant's labeling as described herein and based the decision to purchase Defendant's products, in substantial part, on the label.

36. At point of sale, Plaintiff did not know, and had no reason to know, that the Purchased Products were unlawful and misbranded as set forth herein, and would not have bought the product had he known the truth about it, *i.e.*, that the product was illegal to purchase and possess.

37. After Plaintiff learned that Defendant's Purchased Products were falsely labeled, he stopped purchasing them.

38. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Purchased Products and the Substantially Similar Products at issue.

39. Defendant's labeling is false and misleading and was designed to increase sales of the products at issue. Defendant's misrepresentations are part of their systematic labeling

practices and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase the products at issue.

40. A reasonable person would also attach importance to whether Defendant's products are "misbranded," i.e., legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendant's products had they known they were not capable of being legally sold or held.

41. Plaintiff's purchases of the Purchased Products damaged Plaintiff because misbranded products cannot be legally sold or possessed, have no economic value and are legally worthless. Plaintiff was injured by Defendant's unlawful act of selling an illegal product that was illegal to sell or possess.

42. Defendant's labeling, advertising and marketing as alleged herein are false and misleading and were designed to increase sales of the products at issue. Defendant's misrepresentations and material omissions are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendant's misrepresentations and material omissions in determining whether to purchase the products at issue.

43. A reasonable person would also attach importance to whether Defendant's products were legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Misbranded Food Products. Plaintiff would not have purchased Defendant's Misbranded Food Products had he known they were not capable of being legally sold or held.

44. Defendant's violations of Arkansas law include the illegal advertising, marketing, distribution, delivery and sale of Defendant's Misbranded Food Products to consumers in

Arkansas.

CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action as a class action pursuant to Arkansas Rule of Civil Procedure 23 on behalf of the following class:

All persons who purchased the Bumble Bee Products, in Arkansas, since May 22, 2009 (the "Class").

46. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; (4) the Court to which this case is assigned and its staff; and (5) Class Counsel.

47. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

48. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

49. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its food products it sold to consumers;
- b. Whether the food products at issue were misbranded as a matter of Arkansas law;
- c. Whether Defendant made unlawful and misleading ingredient claims with respect to its food products sold to consumers;
- d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act

(A.C.A. § 20-56-201, *et. seq.*);

- e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);
- f. Whether Defendant breached its implied warranty of merchantability;
- g. Whether Defendant breached its express warranties;
- h. Whether Defendant was negligent in its labeling of the Bumble Bee Products;
- i. Whether Defendant were unjustly enriched by their deceptive practices; and
- j. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

50. Typicality: Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class member sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members, and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members, and are based on the same legal theories.

51. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and his counsel are aware of their fiduciary responsibilities to the

members of the Class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

52. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by each member of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of each Class member's rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

53. The prerequisites to maintaining a class action are met as questions of law or fact common to each Class member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

54. Plaintiff and Plaintiff's counsel are unaware of any difficulties likely in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(Violation of A.C.A. § 4-88-101, et. seq.)**

55. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

56. Defendant's conduct constitutes unlawful, deceptive and unconscionable trade practices. Defendants' conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of the Bumble Bee Product. Defendant's manufacturing, distribution and sale of the Bumble Bee Products were similarly unlawful and deceptive.

57. Defendant unlawfully sold the Bumble Bee Products in Arkansas during the Class Period.

58. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded the Bumble Bee Products to Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas, Defendant engaged in, and continues to engage in, unlawful, deceptive and unconscionable trade practices.

59. Defendant's misleading marketing, advertising, packaging and labeling of the Bumble Bee Products were likely to deceive reasonable consumers.

60. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were deceived.

61. Defendant has engaged in unlawful, deceptive and unconscionable trade practices.

62. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were injured by Defendant's unlawful, deceptive and unconscionable trade practices.

63. Defendants' fraud and deception caused Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas to purchase the Bumble Bee Products that they would otherwise not have purchased had they known the true nature of these products.

64. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were injured as a result of Defendant's unlawful, deceptive and unconscionable trade practices.

65. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas, products that were not capable of being sold or possessed legally, and which have no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

66. As a direct and proximate cause of Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas were injured when they paid good money for these illegal and worthless products. Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas have been damaged in an amount to be determined at trial.

67. As a result of Defendant's unlawful, deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas any money paid for the Bumble Bee Product.

**SECOND CAUSE OF ACTION
(Unjust Enrichment)**

68. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

69. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for Bumble Bee Products.

70. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from the Plaintiff and the Class, in light of the fact that the Bumble Bee Products purchased by Plaintiff and the Class was an illegal product and was not what Defendant represented it to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendant for the misbranded Bumble Bee Products.

**THIRD CAUSE OF ACTION
(Breach Of Implied Warranty Of Merchantability)**

71. Plaintiff repeats and re-alleges each of the above allegations as if fully set forth herein.

72. Implied in the purchase of Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully resold.

73. Defendant knowingly and intentionally misbranded their Misbranded Food Products.

74. Defendant knew those Misbranded Food Products were illegal.

75. When Defendant sold those products it impliedly warranted that the products were legal and could be lawfully possessed and/or sold and therefore, merchantable.

76. Plaintiff would not have knowingly purchased products that were illegal to own or possess.

77. No reasonable consumer would knowingly purchase products that are illegal to own or possess.

78. The purchased Misbranded Food Products were unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

79. In fact, these Misbranded Food Products were illegal, misbranded, and economically worthless.

80. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal, and unsellable product.

81. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Products.

82. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

83. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

84. During the Class Period, the Bumble Bee Products have falsely warranted and represented that the Bumble Bee Products contained minimum levels of Omega 3 nutrient content to justify the representation that the Bumble Bee Products were in fact an "Excellent source of Omega 3." These representations were false and a breach of warranty by Bumble Bee. Bumble Bee has used the terms "Excellent source of Omega 3" to represent that the Bumble Bee Products contained minimum levels of Omega 3 nutrient content. Bumble Bee Products do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the Reference Daily Intake ("RDI") or the Daily Reference Value ("DRV") of a nutrient with a recognized RDI per reference amount customarily consumed.

85. Defendant's representations of fact and/or promises on the labels relating to their Misbranded Food Products created express written warranties that the products would conform to Defendant's representation of fact and/or promises.

86. The Defendant's descriptions of their Misbranded Food Products became part of the bases of the bargains, creating express written warranties that the products purchased by Plaintiff and the other Class Members would conform to Defendant's descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

87. Defendant provided written warranties that its Misbranded Food Products were labeled in compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

88. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the products they purchased was less than warranted by Defendant.

89. Defendant engaged in a scheme of offering Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

90. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products.

91. Plaintiff and the Class were the intended targets of such representations and warranties.

92. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

93. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant's breach of their

express warranties about Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

94. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FIFTH CAUSE OF ACTION
(Negligence)

95. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

96. In making representations of fact to Plaintiff and the other Class members about its Bumble Bee Products, Defendant failed to lawfully label or advertise its Bumble Bee Products and violated its duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

97. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of its duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

98. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence *per se*. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

99. As alleged above, Plaintiff and the Class were injured by Defendant's negligence and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendant as follows:

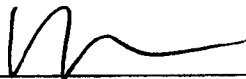
A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled; and

C. For an order awarding pre-judgment and post-judgment interest;

Dated: May 22, 2014

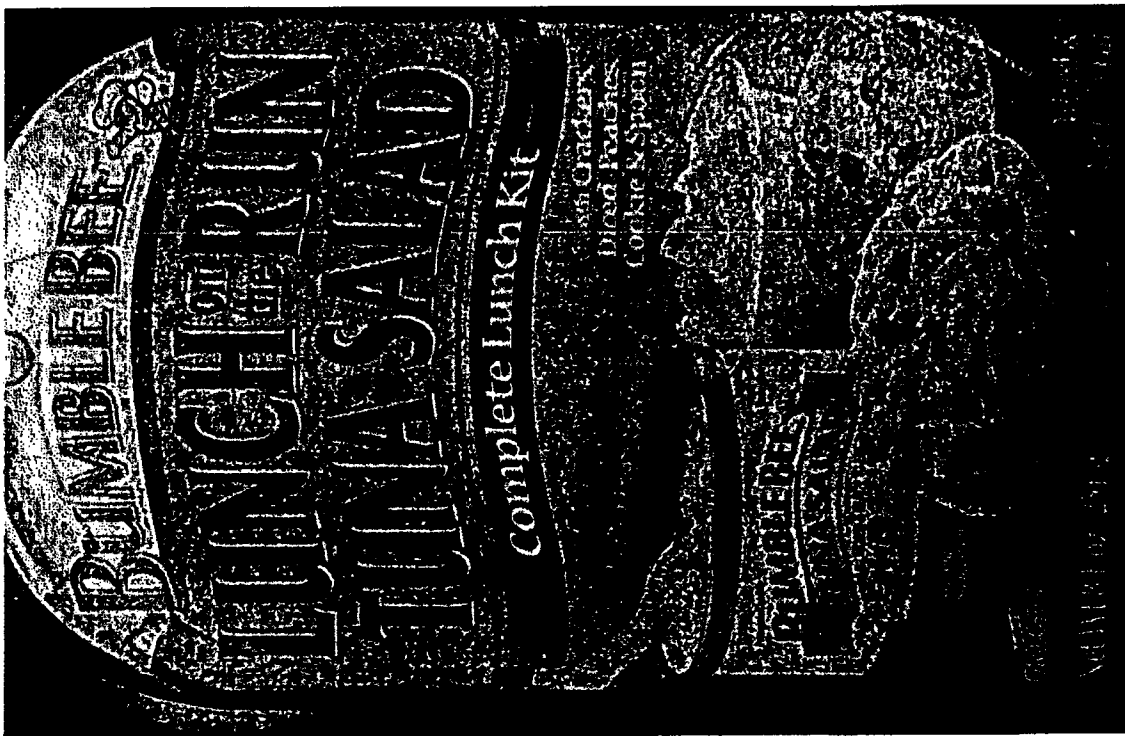
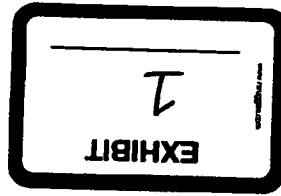
Respectfully submitted,

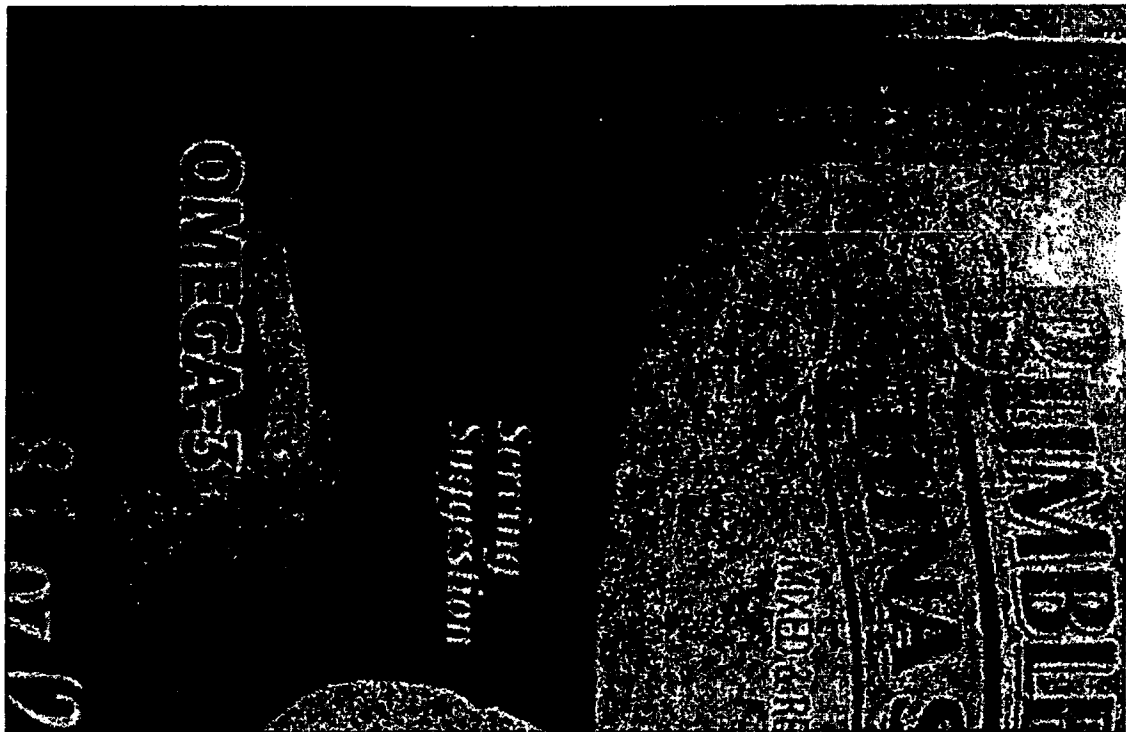


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Bar No. 80147

Attorneys for Plaintiff





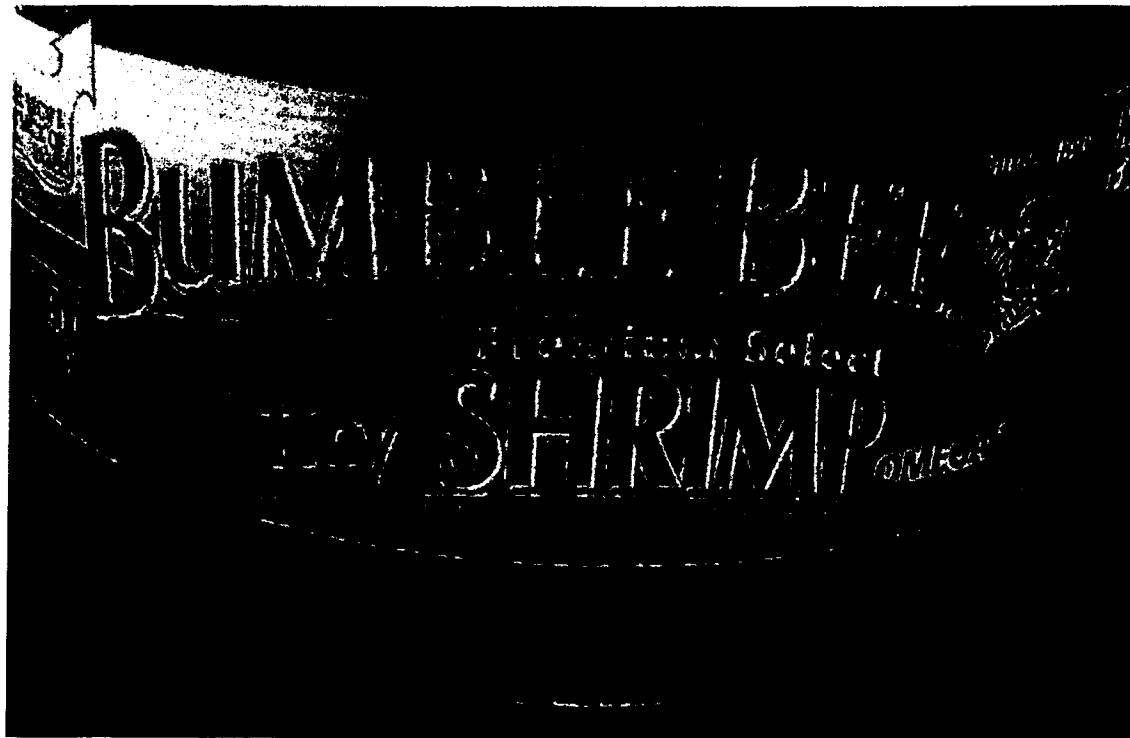
TUNA SALAD COMPLETE LUNCH KIT

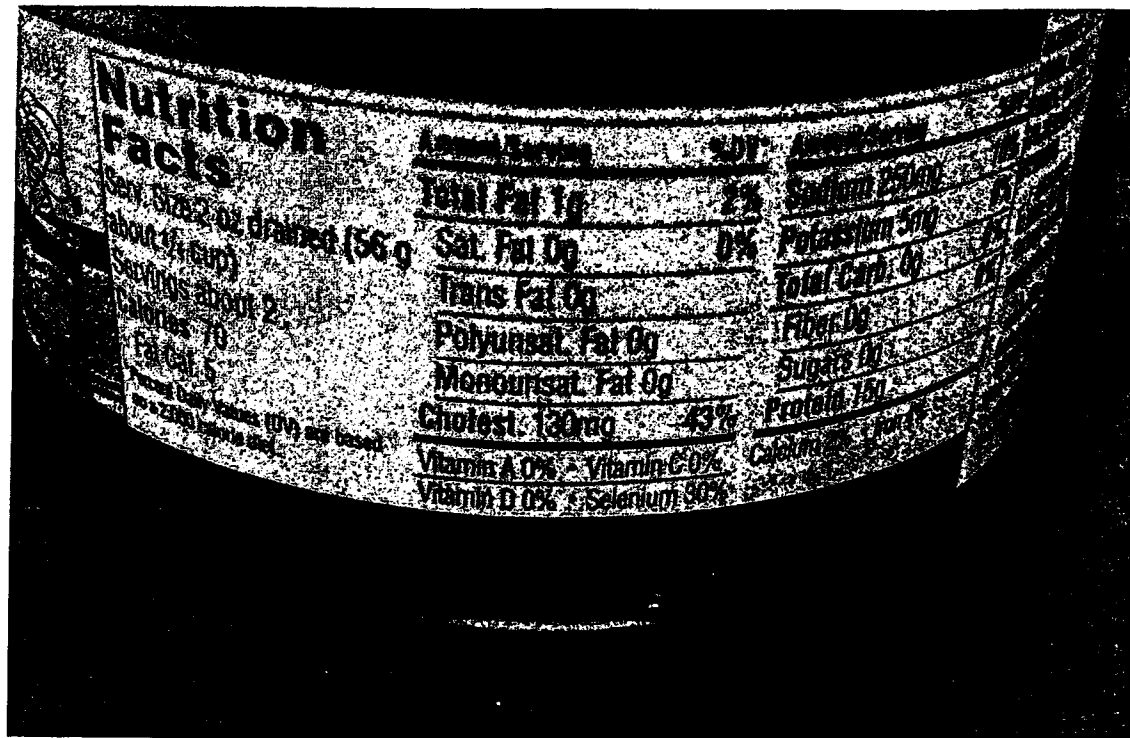
Nutrition Facts Serv. Size 1 Package (8.1oz/231g).
Servings: 1, Amount Per Serving: Calories 500, Fat
Cal. 240, Total Fat 26g (40% DV), Sat. Fat 5g (25%
DV), Trans Fat 0g, Polyunsat. Fat 14g, Monounsat. Fat
6g, Cholest. 25 mg (8% DV), Sodium 530 mg (22%
DV), Total Carb. 52g (17% DV), Fiber 2g (8% DV),
Sugars 30g, Protein 9g, Vitamin A (15% DV), Vitamin
C (100% DV), Calcium (4% DV), Iron (10% DV).
*Percent Daily Values (DV) are based on a 2,000 calorie diet.

CONTAINS 1.6g OMEGA-3 FATTY ACIDS PER SERVING.

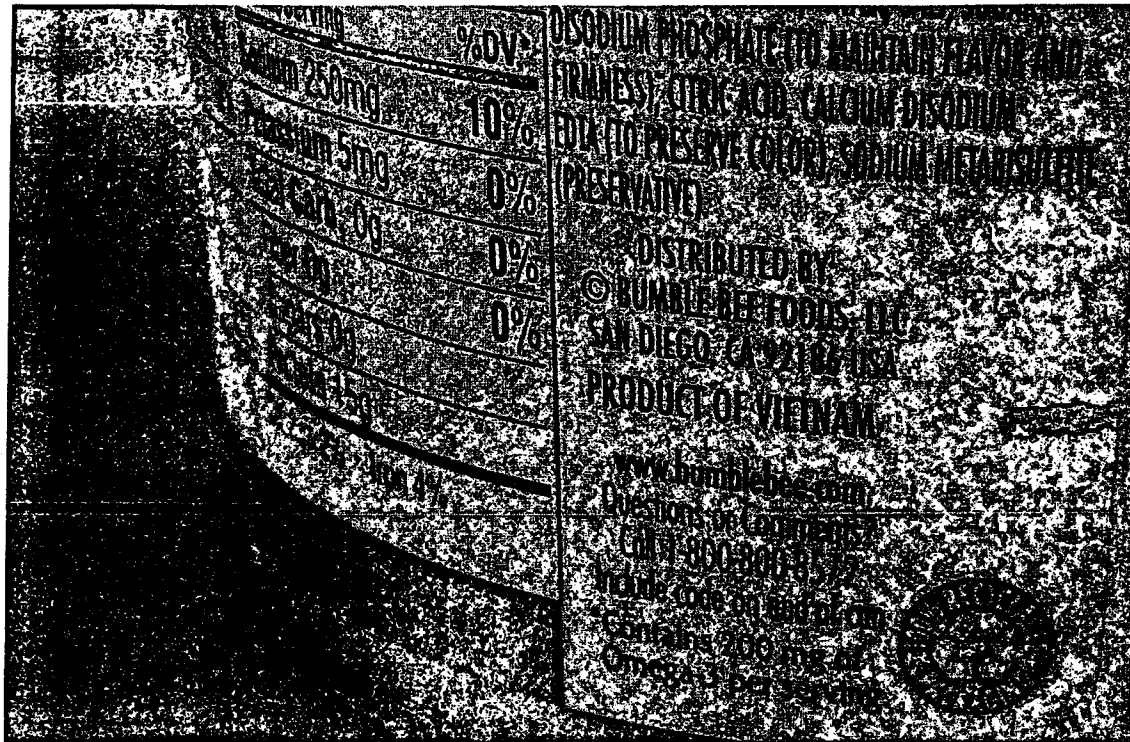
INGREDIENTS: TUNA SALAD: TUNA (LIGHT TUNA, WATER, VEGETABLE PROT. SALT, HEAT
STABLE MAYONNAISE (SOYBEAN OIL, WATER, WHOLE EGGS, EGG YOLKS, VINEGAR, SALT,
SUGAR, POTASSIUM SORBATE (AS A PRESERVATIVE), NATURAL FLAVORS, GARDEN OF
EPIPHANY), CELERY, TEXTURED SOY FLOUR, CARROTS, FRUCTOSE, WATER,
CHESTNUTS, WATER, GLUCONO DELTA LACTONE, DEXTROSE, ONION,
SALT, GUM ARABIC OR XANTHAN GUM. CONTAINS: EGGS,
SOY, TUNA. CRACKERS: ENRICHED FLOUR (WHEAT
FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE
(VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID),
PARTIALLY HYDROGENATED SOYBEAN AND/OR
COTTONSEED OIL WITH TBHQ FOR FRESHNESS,
SUGAR, CONTAINS TWO PERCENT OR LESS OF SALT,
CORN STARCH, LEAVENING (ALUMINUM SULFATE, SODIUM ACID
PYROPHOSPHATE, MONOCALCIUM PHOSPHATE, BUTTER
(CREAM, SALT), SOY LECITHIN. CONTAINS: MILK, SOY,
WHEAT. ONCE PEACHES: ONCE PEACHES, WATER, SUGAR,
NATURAL FLAVORS, ASCORBIC ACID (VITAMIN C) TO PROTECT COLOR, CITRIC
ACID. COOKIES: BLEACHED WHEAT FLOUR, NIACIN, IRON, THIAMIN
MONONITRATE, MONOLAURE, FOLIC ACID, SUGAR, PARTIALLY HYDROGENATED SOYBEAN
& COTTONSEED OIL, CHOCOLATE CHIPS (SUGAR, CHOCOLATE LIQUOR, COCOA BUTTER,
BUTTER, SOY LECITHIN (AN EMULSIFIER), VANILLA (AN ARTIFICIAL FLAVOR), WHOLE EGGS,
WHOLE SUGAR, BAKING SODA, NATURAL VANILLA SALT. CONTAINS: EGGS, SOY, WHEAT,
NATURALLY ACQUIRED ON EQUIPMENT THAT PROCESSES MILK, PEANUTS, AND TREE NUT
INGREDIENTS.

REFERRATE ENLARGED PORTION IN SEPARATE CONTAINER AFTER OPENING.
DISTRIBUTED BY: CHAMBERLAIN FOODS, LLC, "LAW BREAD" (A 97164 BSA
For Ingredient Concerns, Please Call 1-800-888-8888









IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
6th DIVISION

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

BUMBLE BEE FOODS, LLC

Defendant.

FILED FOR RECORD
2
2014 JUN -4 PM 4:18
WASHINGTON COUNTY, ARK.
CIRCUIT CLERK
K. SYLVESTER
FIRST AMENDED CLASS ACTION
COMPLAINT

Case No. CV14-930-6

JURY TRIAL DEMANDED

Plaintiff, Ronald A. Bennett, Jr. ("Plaintiff") brings this First Amended Class Action Complaint against Defendant Bumble Bee Foods, LLC ("Bumble Bee" or "Defendant"). In order to remedy the harm arising from Defendant's illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on behalf of himself and a statewide class of Arkansas consumers who purchased the Bumble Bee Products labeled as "Rich in Natural Omega 3" or "Excellent Source Omega 3," (without reference to the nutritional content of EPA or DHA). These products are referred to herein as "Misbranded Food Products" and/or the "Bumble Bee Products."¹

DEFINITIONS

1. "Class Period" is May 22, 2009 to the present.
2. Over the last five years, Plaintiff purchased Bumble Bee Chunk White Albacore Tuna in Water, Bumble Bee Chunk White Albacore Tuna in Oil, Bumble Bee Solid White Albacore Tuna in Water, Bumble Bee Chunk Light Tuna in Water, Bumble Bee Chunk Light Tuna in Oil, Bumble Bee Tiny Shrimp, and Bumble Bee Lunch on the Run Tuna Salad (hereinafter the "Bumble Bee Products," "Misbranded Food Products" and/or "Purchased Products"). Sample pictures of the Bumble Bee Products are attached at Exhibit 1.

¹ This case includes only the "Purchased Products."

3. “Misbranded Food Products” and/or “Bumble Bee Products” are the Purchased Products identified herein and sold during the Class Period. The Bumble Bee Products sold during the Class Period (“Class Products”) are listed below:

- Bumble Bee Tiny Shrimp
- Bumble Bee Lunch on the Run Tuna Salad
- Bumble Bee Chunk White Albacore Tuna in Water
- Bumble Bee Chunk White Albacore Tuna in Oil
- Bumble Bee Solid White Albacore Tuna in Water
- Bumble Bee Chunk Light Tuna in Water
- Bumble Bee Chunk Light Tuna in Oil

SUMMARY OF THE CASE

4. Defendant packaged and labeled the Bumble Bee Products in violation of Arkansas law. These violations render the Bumble Bee Products “misbranded.” Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value and are legally worthless.

5. The labels on the Bumble Bee Products – aside from being unlawful under the Arkansas law – are also misleading, deceptive, unfair and fraudulent. Plaintiff reviewed the labels on the respective Bumble Bee Products that he purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase these products. The very fact that Defendant sold such illegal Bumble Bee Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the products. Plaintiff relied upon the Defendant’s implied representation that

Defendant's products were legal that arose from Defendant's material omission of the facts that its products were in fact, actually illegal.

6. Plaintiff did not know, and had no reason to know, that Defendant's Bumble Bee Products were misbranded under Arkansas law and that the products bore misleading food labeling claims, despite failing to meet the requirements to make those food labeling claims. Plaintiff did not know, and had no reason to know, that Defendant's product labels were false and misleading.

7. Arkansas law requires truthful, accurate information on the labels of packaged foods. The law is clear: misbranded food cannot legally be sold or possessed. Misbranded food has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price.

8. Arkansas law regulates the content of labels on packaged food. Under Arkansas law, food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its label or its labeling. A.C.A § 20-56-206.

9. Misbranding reaches not only false and untruthful claims, but also those claims that are misleading.

10. If manufacturers, like Defendant, are going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

11. Under Arkansas law, Defendant's food labeling practices are both (i) unlawful and (ii) deceptive and misleading to consumers.

PARTIES

12. Plaintiff, Ronald A. Bennett, Jr., is a resident of Fayetteville, Washington County, Arkansas, who purchased Bumble Bee Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the "Class Period").

13. Defendant Bumble Bee Foods, LLC is a Delaware corporation doing business in the State of Arkansas and throughout the United States of America. Bumble Bee's principal place of business is 9655 Granite Ridge Dr., Suite 100, San Diego, CA 92123.

14. Defendant sells its food products to consumers through grocery and other retail stores throughout Arkansas.

JURISDICTION AND VENUE

15. This Court has jurisdiction pursuant to Ark. Const., Amend. 80, § 6, and A.C.A. § 16-13-201(a). This Court also has jurisdiction pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

16. This Court has personal jurisdiction over Defendant, Bumble Bee, pursuant to A.C.A. § 16-4-101. At all times material to this action, Defendant was conducting business in the State of Arkansas. The Plaintiff purchased product sold and manufactured by the Defendant in the State of Arkansas and part of the transactions which give rise to this action took place in Washington County, Arkansas.

17. Venue is proper in this judicial district pursuant to A.C.A. § 16-55-213, *et al*, on the grounds that Defendant's misconduct occurred, in part, in Washington County.

18. The named Plaintiff and the Class Members assert no federal question. The state law causes of action asserted herein are not federally pre-empted.

19. The named Plaintiff and the Class Members assert that the aggregate amount in controversy will not exceed the sum or value of \$4,999,999.00, including compensatory damages,

and restitution. The aggregate amount in controversy of the Class Members' claims does not and will not exceed \$4,999,999.00, excluding interest. No Class Member has a claim which exceeds \$74,999.00, including compensatory damages, and restitution.

FACTUAL ALLEGATIONS

20. Bumble Bee produces a variety of seafood products. Bumble Bee Products included canned and pouched tuna, salmon, shrimp, crab, clams, oysters, sardines, mackerel, and chicken.

A. Arkansas Laws Regulate Food Labeling

21. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

22. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq.*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

B. Defendant's Food Products are Misbranded with an Unlawful Omega 3 Nutrient Content Claim

23. Defendant's products are illegally misbranded because their labeling contains the unauthorized statement "Excellent Source of Omega 3" or "Rich in Natural Omega 3."

24. Regulations adopted by Arkansas law provide specific requirements for nutrient content claims that specify that where a particular nutrient does not have an established daily value (DV), food producers may not state on their food labels that their food product is a "good source" of the nutrient, or use a comparable phrase, such as "excellent source" or "rich in."

25. Applicable regulations adopted under Arkansas law regulate Omega 3 claims as a

particular type of nutrient content claim. Because Omega 3 does not have an established daily value (DV), food producers may not state on their labels that their products are a "good source" or "Excellent source" of Omega 3, or use a synonym conveying the same message.

26. Defendant has misbranded its products by representing that its products are an "excellent source" of Omega 3 or "rich in" Omega 3. The Bumble Bee Products claim to be an "excellent source of Omega 3" or "naturally rich in Omega 3," but they fail to disclose that Omega 3 has no established Daily Value. Thus, these products violate the applicable regulations under Arkansas law.

27. A reasonable consumer would consider these representations when deciding to purchase Defendant's products. Defendant's utilization of unlawful nutrient content claims renders the labels of these products false and misleading. The failure to comply with the labeling requirements renders Defendant's products misbranded as a matter of Arkansas law. Misbranded products cannot be legally sold or possessed and are therefore, legally worthless.

28. Plaintiff read the Omega 3 nutrient content claims on the Defendant's Misbranded Food Products and relied on the Omega 3 nutrient content claims when making his purchase decisions. Plaintiff was misled by Defendant's misrepresentations that the Defendant's products he was purchasing qualified for the nutritional claims being made and met the minimum nutritional thresholds to make such claims. Plaintiff would not have purchased these products had he known that the products did not in fact qualify for the nutritional claims being made and failed to meet the minimum nutritional thresholds to make such claims.

29. Plaintiff was misled, by Defendant's unlawful labeling practices and actions, into purchasing products that he would not have otherwise purchased had he known the truth about those products.

30. Bumble Bee Albacore Tuna in Water, Bumble Bee Chunk Light Tuna in Water,

Bumble Bee Tiny Shrimp and Bumble Bee Lunch on the Run Tuna Salad are all labeled "Excellent Source Omega 3." These Purchased Products bear an unlawful Omega 3 nutrient content claim.

31. Exemplar labels of the Purchased Products are provided in Exhibit "1." These exhibits are true, correct and accurate photographs of Bumble Bee labels. At all times during the Class Period, the above listed Bumble Bee Products contained an unlawful Omega 3 nutrient content claim.

C. Defendant has Knowingly Violated Arkansas Law

32. Defendant has violated the Arkansas Food, Drug and Cosmetic Act (§ 20-56-201, *et. seq.*), which makes it unlawful to disseminate false or misleading food advertisements or statements on products and product packaging, labeling or any other medium used to directly or indirectly induce the purchase of a food product.

33. Defendant has violated A.C.A § 20-56-215 which makes it unlawful to manufacture, sell, deliver, hold or offer to sell any misbranded food.

34. Defendant's Misbranded Food Products are misbranded under Arkansas law because they purport to be or are represented to be for special dietary uses, and their labels fail to bear information concerning their vitamin, mineral, and other dietary properties that applicable regulations and laws have prescribed as necessary in order to fully inform purchasers as to their value for such uses.

D. Plaintiff Purchased Defendant's Misbranded Food Products

35. As described in Paragraph 2, Plaintiff purchased the Purchased Products. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

36. Plaintiff read and reasonably relied on the labels on Defendant's Purchased Products before purchasing them as described herein. Plaintiff relied on Defendant's labeling as

described herein and based the decision to purchase Defendant's products, in substantial part, on the label.

37. At point of sale, Plaintiff did not know, and had no reason to know, that the Purchased Products were unlawful and misbranded as set forth herein, and would not have bought the product had he known the truth about it, *i.e.*, that the product was illegal to purchase and possess.

38. After Plaintiff learned that Defendant's Purchased Products were falsely labeled, he stopped purchasing them.

39. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Purchased Products and the Substantially Similar Products at issue.

40. Defendant's labeling is false and misleading and was designed to increase sales of the products at issue. Defendant's misrepresentations are part of their systematic labeling practices and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase the products at issue.

41. A reasonable person would also attach importance to whether Defendant's products are "misbranded," *i.e.*, legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendant's products had they known they were not capable of being legally sold or held.

42. Plaintiff's purchases of the Purchased Products damaged Plaintiff because misbranded products cannot be legally sold or possessed, have no economic value and are legally worthless. Plaintiff was injured by Defendant's unlawful act of selling an illegal product that was illegal to sell or possess.

43. Defendant's labeling, advertising and marketing as alleged herein are false and misleading and were designed to increase sales of the products at issue. Defendant's misrepresentations and material omissions are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendant's misrepresentations and material omissions in determining whether to purchase the products at issue.

44. A reasonable person would also attach importance to whether Defendant's products were legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Misbranded Food Products. Plaintiff would not have purchased Defendant's Misbranded Food Products had he known they were not capable of being legally sold or held.

45. Defendant's violations of Arkansas law include the illegal advertising, marketing, distribution, delivery and sale of Defendant's Misbranded Food Products to consumers in Arkansas.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action as a class action pursuant to Arkansas Rule of Civil Procedure 23 on behalf of the following class:

All persons who purchased Bumble Bee Chunk White Albacore Tuna in Water, Bumble Bee Chunk White Albacore Tuna in Oil, Bumble Bee Solid White Albacore in Water, Bumble Bee Chunk Light Tuna in Water, Bumble Bee Chunk Light Tuna in Oil, Bumble Bee Tiny Shrimp and Bumble Bee Lunch on the Run Tuna Salad, labeled as "Rich in Natural Omega" or "Excellent Source Omega 3" (without reference to the nutritional content of EPA or DHA), in Arkansas, since May 22, 2009 (the "Class").

47. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; (4) the Court to which this case is assigned and its

staff; and (5) Class Counsel.

48. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

49. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

50. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its food products it sold to consumers;
- b. Whether the food products at issue were misbranded as a matter of Arkansas law;
- c. Whether Defendant made unlawful and misleading ingredient claims with respect to its food products sold to consumers;
- d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act (A.C.A. § 20-56-201, *et. seq.*);
- e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);
- f. Whether Defendant breached its implied warranty of merchantability;
- g. Whether Defendant breached its express warranties;
- h. Whether Defendant was negligent in its labeling of the Bumble Bee Products;
- i. Whether Defendant were unjustly enriched by their deceptive practices; and
- j. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

51. Typicality: Plaintiff's claims are typical of the claims of the members of the Class

because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class member sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members, and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members, and are based on the same legal theories.

52. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and his counsel are aware of their fiduciary responsibilities to the members of the Class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

53. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by each member of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of each Class member's rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions

would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

54. The prerequisites to maintaining a class action are met as questions of law or fact common to each Class member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

55. Plaintiff and Plaintiff's counsel are unaware of any difficulties likely in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Violation of A.C.A. § 4-88-101, et. seq.)

56. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

57. Defendant's conduct constitutes unlawful, deceptive and unconscionable trade practices. Defendants' conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of the Bumble Bee Product. Defendant's manufacturing, distribution and sale of the Bumble Bee Products were similarly unlawful and deceptive.

58. Defendant unlawfully sold the Bumble Bee Products in Arkansas during the Class Period.

59. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded the Bumble Bee Products to Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas, Defendant engaged in, and continues to engage in, unlawful, deceptive and unconscionable trade practices.

60. Defendant's misleading marketing, advertising, packaging and labeling of the Bumble Bee Products were likely to deceive reasonable consumers.

61. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were deceived.

62. Defendant has engaged in unlawful, deceptive and unconscionable trade practices.

63. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were injured by Defendant's unlawful, deceptive and unconscionable trade practices.

64. Defendants' fraud and deception caused Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas to purchase the Bumble Bee Products that they would otherwise not have purchased had they known the true nature of these products.

65. Plaintiff and other members of the Class who purchased the Bumble Bee Products in Arkansas were injured as a result of Defendant's unlawful, deceptive and unconscionable trade practices.

66. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas, products that were not capable of being sold or possessed legally, and which have no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

67. As a direct and proximate cause of Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased the Bumble Bee Products in

Arkansas were injured when they paid good money for these illegal and worthless products. Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas have been damaged in an amount to be determined at trial.

68. As a result of Defendant's unlawful, deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased the Bumble Bee Products in Arkansas any money paid for the Bumble Bee Product.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

69. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

70. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for Bumble Bee Products.

71. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from the Plaintiff and the Class, in light of the fact that the Bumble Bee Products purchased by Plaintiff and the Class was an illegal product and was not what Defendant represented it to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendant for the misbranded Bumble Bee Products.

THIRD CAUSE OF ACTION
(Breach Of Implied Warranty Of Merchantability)

72. Plaintiff repeats and re-alleges each of the above allegations as if fully set forth herein.

73. Implied in the purchase of Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully resold.

74. Defendant knowingly and intentionally misbranded their Misbranded Food Products.

75. Defendant knew those Misbranded Food Products were illegal.

76. When Defendant sold those products it impliedly warranted that the products were legal and could be lawfully possessed and/or sold and therefore, merchantable.

77. Plaintiff would not have knowingly purchased products that were illegal to own or possess.

78. No reasonable consumer would knowingly purchase products that are illegal to own or possess.

79. The purchased Misbranded Food Products were unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

80. In fact, these Misbranded Food Products were illegal, misbranded, and economically worthless.

81. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal, and unsellable product.

82. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Products.

83. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

84. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

85. During the Class Period, the Bumble Bee Products have falsely warranted and represented that the Bumble Bee Products contained minimum levels of Omega 3 nutrient content to justify the representation that the Bumble Bee Products were in fact an "Rich in Natural Omega 3" or "Excellent source of Omega 3." These representations were false and a breach of warranty by Bumble Bee. Bumble Bee has used the terms "Rich in Natural Omega 3" and/or "Excellent source of Omega 3" to represent that the Bumble Bee Products contained minimum levels of Omega 3 nutrient content. Bumble Bee Products do not meet the minimum nutrient level threshold to make such a claim which is 10% or more of the Reference Daily Intake ("RDI") or the Daily Reference Value ("DRV") of a nutrient with a recognized RDI per reference amount customarily consumed.

86. Defendant's representations of fact and/or promises on the labels relating to their Misbranded Food Products created express written warranties that the products would conform to Defendant's representation of fact and/or promises.

87. The Defendant's descriptions of their Misbranded Food Products became part of the bases of the bargains, creating express written warranties that the products purchased by Plaintiff and the other Class Members would conform to Defendant's descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

88. Defendant provided written warranties that its Misbranded Food Products were labeled in compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

89. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the products they purchased was less than warranted by Defendant.

90. Defendant engaged in a scheme of offering Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging

and labeling.

91. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products.

92. Plaintiff and the Class were the intended targets of such representations and warranties.

93. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

94. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant's breach of their express warranties about Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

95. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FIFTH CAUSE OF ACTION
(Negligence)

96. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

97. In making representations of fact to Plaintiff and the other Class members about its Bumble Bee Products, Defendant failed to lawfully label or advertise its Bumble Bee Products and violated its duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

98. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of its duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

99. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence *per se*. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

100. As alleged above, Plaintiff and the Class were injured by Defendant's negligence and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendant as follows:

A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;

B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled; and

C. For an order awarding pre-judgment and post-judgment interest;

Dated: June 4, 2014

Respectfully submitted,



Kenneth R. Shemin, ABA No. 78138
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Telephone: (479) 250-4764
Facsimile: (479) 845-2198

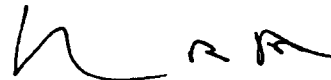
Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

Attorneys for Plaintiff

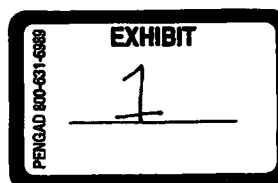
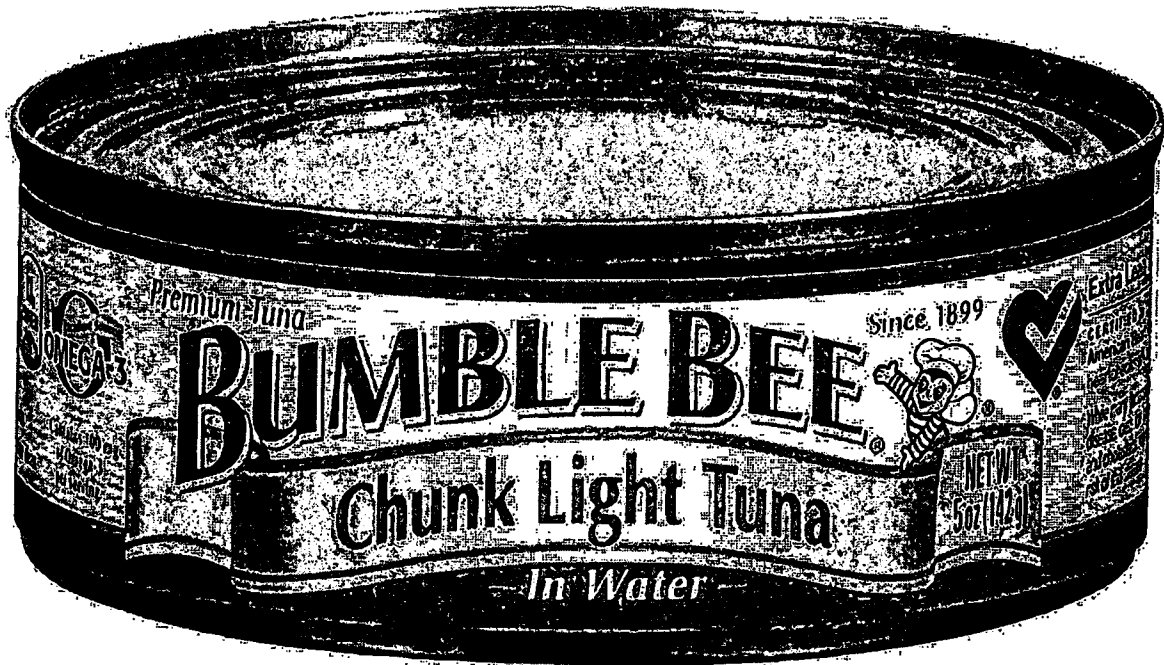
CERTIFICATE OF SERVICE

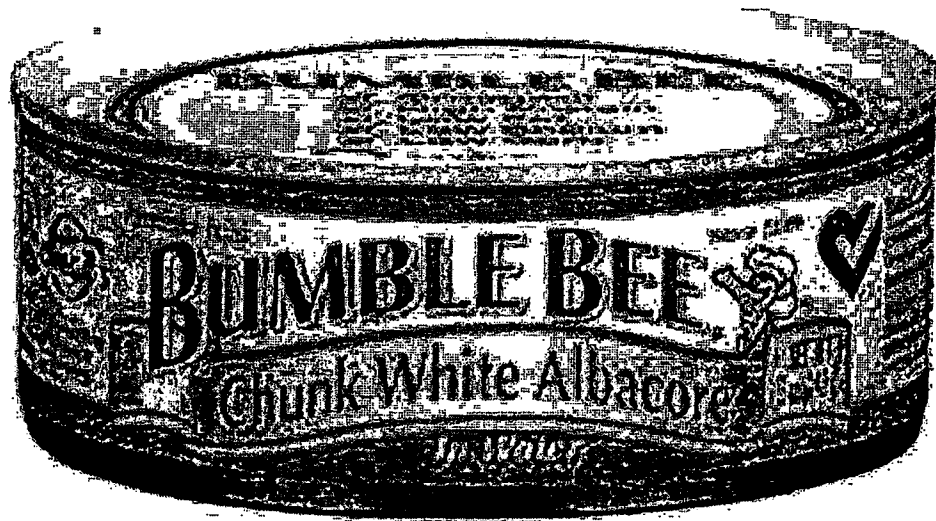
I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the First Amended Complaint through service of process on this 4th day of June, 2014.

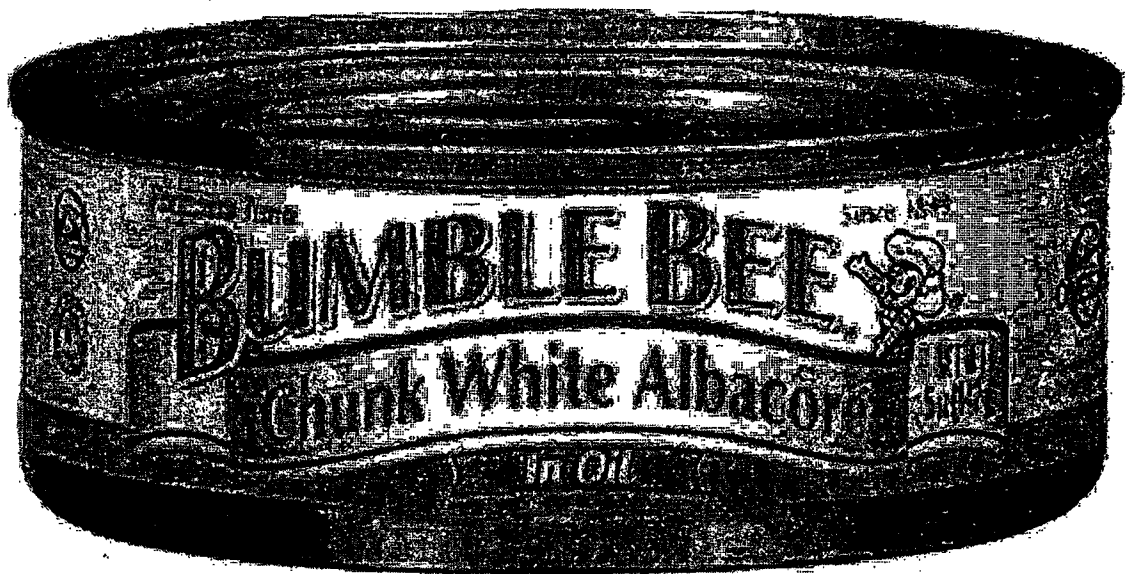
The Corporation Trust Company
Agent of Service for Bumble Bee Foods, LLC
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



Kenneth R. Shemin

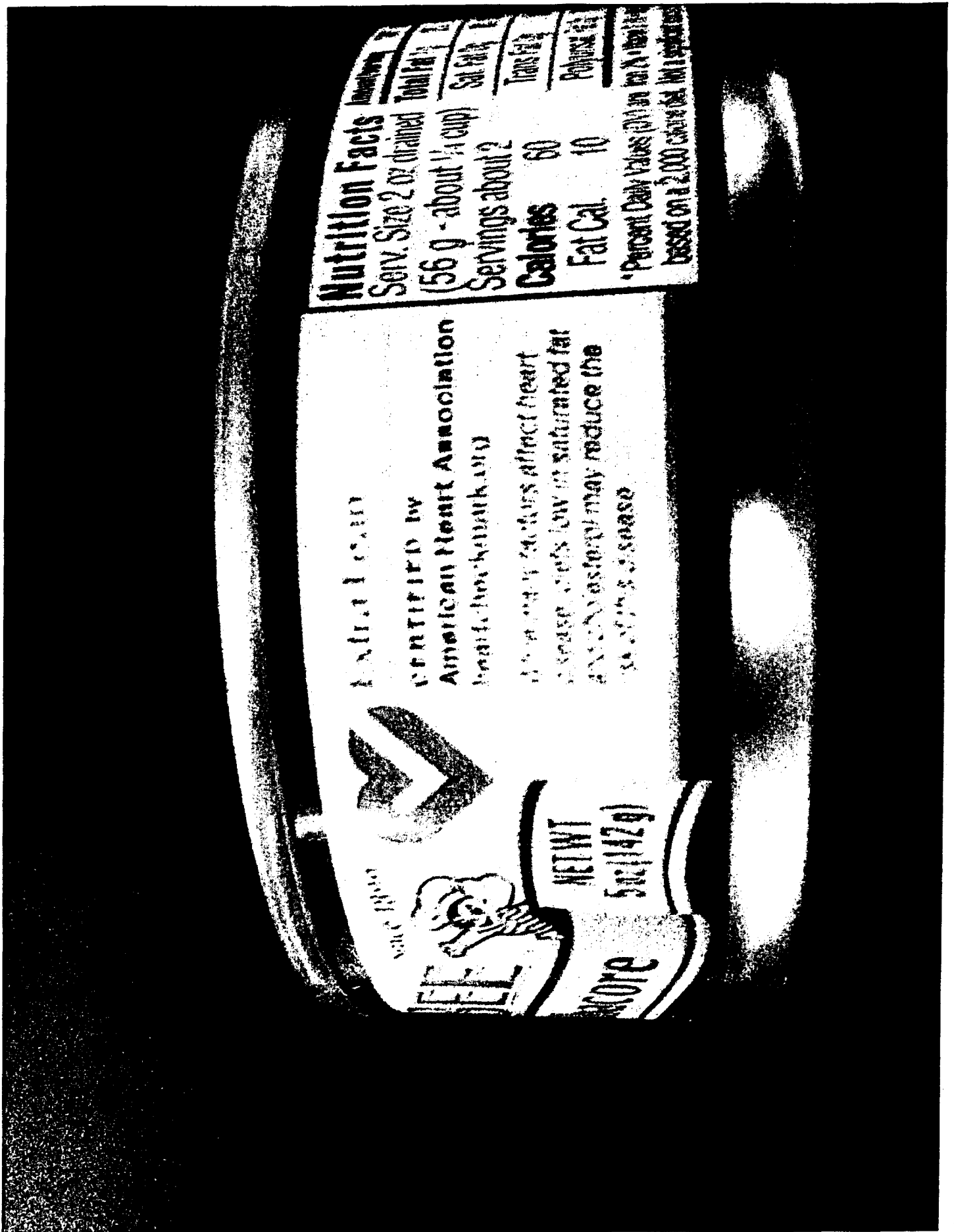
















TUNA SALAD COMPLETE LUNCH KIT

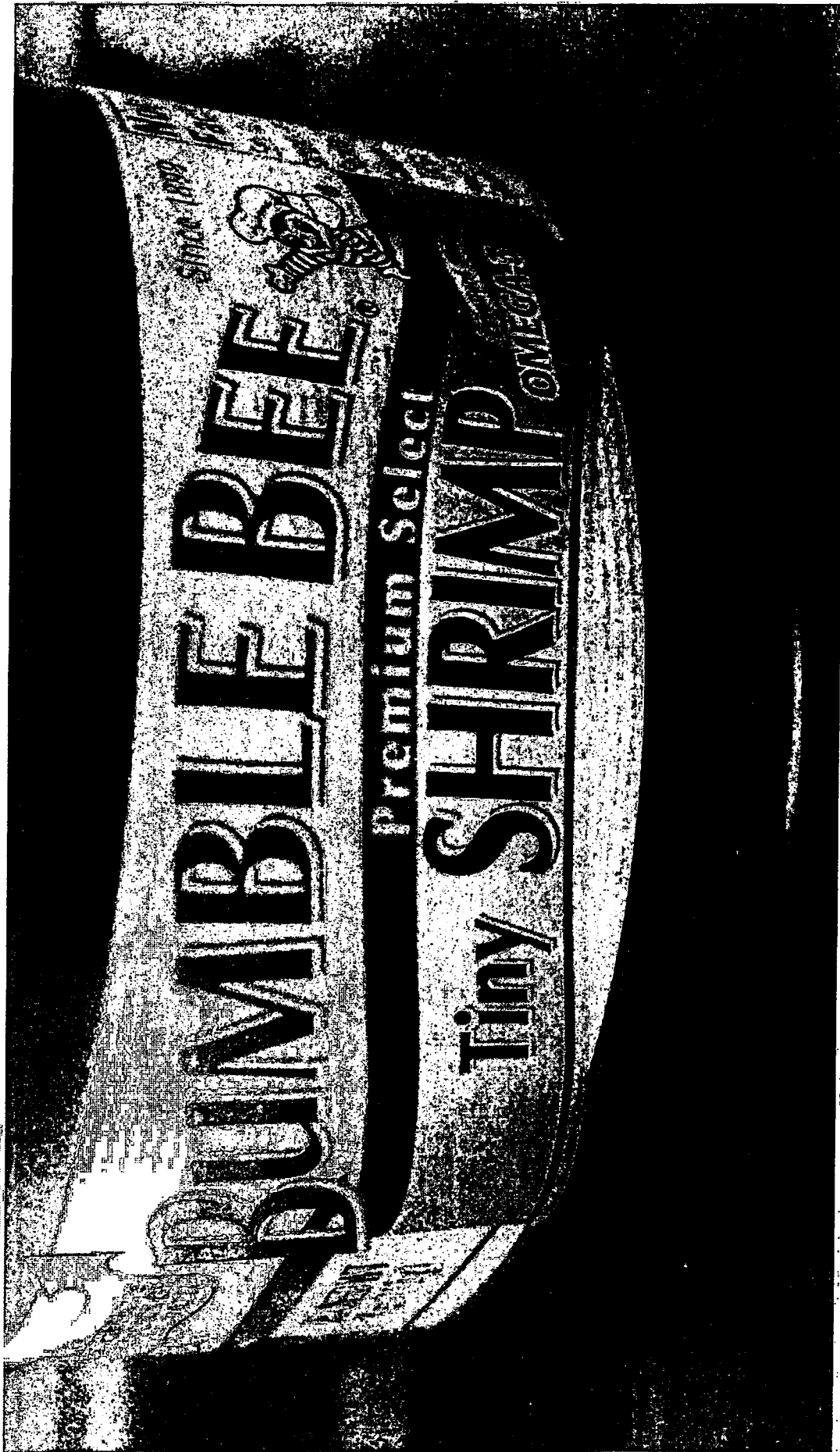
Nutrition Facts Serv. Size 1 Package (8.1oz/231g),
Servings:1, Amount Per Serving: **Calories** 500, Fat
Cal. 240, Total Fat 26g (40% DV), Sat. Fat 5g (25%
DV), Trans Fat 0g, Polyunsat. Fat 14g, Monounsat. Fat
6g, **Cholest.** 25 mg (8% DV), **Sodium** 530 mg (22%
DV), **Total Carb.** 52g (17% DV), Fiber 2g (8% DV),
Sugars 30g, **Protein** 9g, Vitamin A (15% DV), Vitamin
C (100% DV), Calcium (4% DV), Iron (10% DV).
*Percent Daily Values (DV) are based on a 2,000 calorie diet.

CONTAINS 1.6g OMEGA-3 FATTY ACIDS PER SERVING.

INGREDIENTS: **TUNA SALAD:** TUNA (LIGHT TUNA, WATER, VEGETABLE BROTH, SALT), HEAT
STABLE MAYONNAISE (SOYBEAN OIL, WATER, WHOLE EGGS, EGG YOLKS, VINEGAR, SALT,
SUGAR, POTASSIUM SORBATE (AS A PRESERVATIVE), NATURAL FLAVORS, OLEORESIN
PAPRIKA), CELERY, TEXTURED SOY FLOUR, CARROTS, FRUCTOSE, WATER
CHESTNUTS, WATER, GLUCONO DELTA LACTONE, DEXTROSE, ONION,
SALT, GUM ARABIC OR XANTHAN GUM. **CONTAINS:** EGGS,
SOY, TUNA. **CRACKERS:** ENRICHED FLOUR (WHEAT
FLOUR, NIACIN, REDUCED IRON, THIAMIN MONONITRATE
(VITAMIN B1), RIBOFLAVIN (VITAMIN B2), FOLIC ACID),
PARTIALLY HYDROGENATED SOYBEAN AND/OR
COTTONSEED OIL WITH TBHQ FOR FRESHNESS,
SUGAR, CONTAINS TWO PERCENT OR LESS OF SALT,
CORN SYRUP, LEAVENING (BAKING SODA, SODIUM ACID
PYROPHOSPHATE, MONOCALCIUM PHOSPHATE), BUTTER
(CREAM, SALT), SOY LECITHIN. **CONTAINS:** MILK, SOY,
WHEAT. **DICED PEACHES:** DICED PEACHES, WATER, SUGAR,
NATURAL FLAVORS, ASCORBIC ACID (VITAMIN C) TO PROTECT COLOR, CITRIC
ACID. **COOKIE:** ENRICHED WHEAT FLOUR (NIACIN, IRON, THIAMIN
MONONITRATE, RIBOFLAVIN, FOLIC ACID), SUGAR, PARTIALLY HYDROGENATED SOYBEAN
& COTTONSEED OIL, CHOCOLATE CHIPS (SUGAR, CHOCOLATE LIQUOR, COCOA BUTTER,
DEXTROSE, SOY LECITHIN [AN EMULSIFIER], VANILLIN [AN ARTIFICIAL FLAVOR]), WHOLE EGGS,
BRYER SUGAR, BAKING SODA, NATURAL VANILLA, SALT. **CONTAINS:** EGGS, SOY, WHEAT.
**MANUFACTURED ON EQUIPMENT THAT PROCESSES MILK, PEANUTS, AND TREE NUT
INGREDIENTS.**

REFRIGERATE UNUSED PORTION IN SEPARATE CONTAINER AFTER OPENING

DISTRIBUTED BY: CRUMBLE BEE FOODS, LLC, SAN DIEGO, CA 92104 USA
For Inquiries Concerning Product Include Number Shown On Package And Can End.



Nutrition Facts		
Serving Size 2 oz (56g)		
Amount per Serving		
Calories about 2		
Fat-Cal. 5		
Percent Daily Values (DV) are based on a diet of 2,000 calories		
Total Fat 1g	2%	Sodium 250mg
Sat Fat 0g	0%	Potassium 570g
Trans Fat 0g		Total Carb. 0g
Polyunsat. Fat 0g		Fiber 0g
Monounsatur. Fat 0g		Sugars 0g
Cholest. 130mg	43%	Protein 15g
Vitamin A 0%	Vitamin C 0%	Calcium 2%
Vitamin D 0%	Selenium 30%	Iron 1%



INGREDIENTS: SHRIMP, WATER, SALT, SUGAR,
DISODIUM PHOSPHATE (TO MAINTAIN FLAVOR AND
FIRMNESS), CITRIC ACID, CALCIUM DISODIUM
EDTA (TO PRESERVE COLOR), SODIUM METABISULFITE
(PRESERVATIVE).

DISTRIBUTED BY:
© BUMBLE BEE FOODS, LLC
SAN DIEGO, CA 92186 USA
PRODUCT OF VIETNAM

www.bumblebee.com
Questions or Comments?
Call 1-800-800-8572
Include code on end of can
*Contains 200 mg of
Omega-3 per serving.



Per Serving	%DV*
Sodium 250mg	10%
Potassium 5mg	0%
Total Carb. 0g	0%
Fat 0g	0%
Fats 0g	0%
Fiber 15g	
*Iron 4%	

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
6th DIVISION**

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

BUMBLE BEE FOODS, LLC

Defendant.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT**

Case No. CV14-930-6

Pursuant to Arkansas Rule of Civil Procedure 33, Plaintiff propounds the following Interrogatories on Defendant, Bumble Bee Food, LLC.

DEFINITIONS

- A. "Complaint" means the Class Action Complaint filed on May 22, 2014 in this action.
- B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.
- C. "You" or "your" means Defendant, its parent companies and its respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint ventures, present and former officers, directors, partners, principals, employees, representatives, agents, attorneys, advisors, and all other persons acting or purporting to act on its behalf. This definition includes your brands Beach Cliff®, Brunswick® and King Oscar®.
- D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Food Products" means all of your food products, containing Product Claims.

F. "Label" means the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your Food Products.

G. "Health Claim" means any claim made on your labels that expressly or by implication (including "third party" references, written statements, symbols, or vignettes) characterizes the relationship of any substance to a disease or health-related condition.

H. "Implied Health Claim" means those statements, symbols, vignettes, or other forms of communication on your labels that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition.

I. "Drug Claim" means representations on your labels that a food product is intended for use in the cure, mitigation, treatment, or prevention of disease.

J. "Product Claims" means your allegedly unlawful product labeling and website representations regarding your food products as described in the Complaint. Product Claims, includes but is not limited to, the following representations on your labels or on your websites:

1. "rich in" natural Omega-3;
2. "excellent source" of Omega-3;

This definition is nonexclusive and is meant to encompass all *substantially similar* labeling representations.

K. "FDA" means the Federal Food and Drug Administration.

L. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

M. "Document" or "documents" means any and all writings of any kind as said term is defined in Ark. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft thereof. The term document shall also include every other means by which information is

recorded or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

INSTRUCTIONS

- A. Unless stated otherwise, the time period covered by these interrogatories is eight (8) years preceding the filing of the Complaint in this action to the present.
- B. All definitions and instructions set forth in Rules 26 and 33 of the Federal Rules of Civil Procedure apply to all requests for information herein.
- C. Your answer to each interrogatory must include all information known to you or available to you, including information within the knowledge or possession of your attorneys, investigators or other agents.
- D. When a complete answer to a particular interrogatory is not possible, answer the interrogatory to the extent possible and state why you are giving only a partial answer.
- E. If you withhold any information called for by any interrogatory on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine, provide sufficient information to permit Plaintiff's counsel to determine whether protection from disclosure is warranted.
- F. These interrogatories shall be deemed to be continuing. Any information responsive to these interrogatories that you acquire at any time between when you first respond to these interrogatories and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

G. When asked to "identify" or provide the "identity" of a person or persons, the following information should be provided:

1. The person's full name;
2. The person's last known business address;
3. The person's last known home address;
4. The person's last known business phone number;
5. The person's last known home phone number;
6. The name and address of the person's last known employer;
7. The person's last known title, position, business or employment;
8. The person's social security number and date of birth; and
9. The person's whereabouts.

H. When asked to "identify" or provide the "identity" of a product, the commonly used name used at the point of sale should be used.

INTERROGATORIES

1. Identify each person known to you to have knowledge or information relevant to the facts alleged and the claims for damages asserted in the Plaintiff's Complaint and indicate the scope and nature of such person's knowledge.

2. Identify each person (other than your attorneys) who assisted in the preparation of your responses to these interrogatories and the specific interrogatories with which each such person assisted and list all documents you consulted to prepare your answers to these interrogatories.

3. Identify by caption, case number and forum any litigation, mediation, or arbitration regarding your food products and the Product Claims where you were or are a party.

4. Identify all of your food products.

5. Identify all of your food products with Product Claims.

6. For each product listed in interrogatories 4 and 5, please list, by state and year, the amount of units sold per product and the average retail and wholesale price per unit.

7. For each label produced in response to Document Request No. 1, please identify, list or describe the following:

- a. the date each label was included on each product;
- b. the person(s) most knowledgeable about the creation of the label and any changes to the label.

8. Describe and explain, in detail, the process by which you make decisions regarding your labels, including, but not limited to, why labels are changed, who decides what new labels are used and when, what department drafts new labels, what criteria are used for selecting labels, who ensures label compliance with applicable standards and laws.

9. Describe and explain, in detail, your efforts to promote and advertise your food products as "healthy" including, but not limited to, the reasons for any such promotion, the dates any such promotion began, the specific steps taken in furtherance of this promotion, and the impact on your sales as a result of this promotion.

10. Identify, describe and explain, in detail, all scientific information, studies or reports that you claim support any Product Claims you make on your food products.

11. Identify each person responsible and/or has the responsibility for ensuring that your labels were and are in compliance with federal and Arkansas labeling laws and regulations.

12. Identify your departments, divisions, business units, third parties, attorneys, or agents who are (or have been) responsible for or otherwise involved in each of the following:

- a. creation of labels for your food products;
- b. marketing materials, marketing studies, consumer research, or advertising of your food products;
- c. creation and maintenance of your websites;

- d. accounting and sales data for your food products;
 - e. compliance with all Arkansas and federal labeling laws and regulations.
13. Identify the person(s) most knowledgeable about the Product Claims.
14. Identify all websites and marketing materials concerning or containing the Product Claims.
15. Describe and explain, in detail, any regulatory compliance action undertaken by the FDA concerning you, your Food Products, or the Product Claims and identify the person(s) most knowledge about such action.
16. Identify the person(s) most knowledgeable about your retail and wholesale prices for your food products.
17. Identify any scientific expert with whom you have communicated concerning your food products or the Product Claims.
18. Identify any persons in the area of labeling regulatory compliance who have given you any opinions, written or oral, concerning your food products or the Product Claims.
19. If you contend that your labels do not violate federal or Arkansas law, describe the factual basis for this contention.
20. Identify all of your websites, all Product Claims made on those websites, and the dates the Product Claims were on the websites.
21. Have you been a member of any trade associations or industry organizations? If yes, please list these groups and the dates of your membership.
22. Identify each person who may be called to testify at the class certification hearing or trial, including the claims asserted and any alleged defenses to be raised and, for each such person, provide a statement summarizing that person's knowledge or information regarding this

lawsuit and the relevance of such knowledge or information to the asserted claims or any defense to be raised.

23. State whether any information or documents have been withheld on the basis of any form of privilege in response to these Interrogatories or Plaintiff's First Request for Production of Documents, whether based on statute or otherwise, and provide all information required by the Definitions and Instructions section with respect to each such document or piece of information which has been withheld.

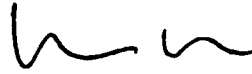
24. Identify all persons you intend to call as an expert witness at the Class Certification hearing and/or Trial and provide for each, a summary of their opinions and/or expected testimony.

25. For each expert witness you will call to testify at the Class Certification hearing or the trial of this case state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;
- c. The identity of all documents that have been provided to each expert or have been reviewed in connection with the expert's expected testimony in this case;
- d. The identity of all reports, schedules, photographs, charts, diagrams, work papers, and all other documents that each expert witness in connection with this proceeding; and
- e. The date and subject matter of all communications that each expert has had with any party to this action, the identity of the party with whom each expert has communicated concerning this action and the identity of all documents relating to such communications.

Dated: June 5, 2014

Respectfully submitted,



Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 250-4764
Fax: (479) 845-2198

Thomas P. Thrash (ABA No. 80147)
Marcus N. Bozeman (ABA No. 95287)
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Telephone: (501) 374-1058
Facsimile: (501) 374-2222

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 5th day of June, 2014.

The Corporation Trust Company
Agent of Service for Bumble Bee Foods, LLC
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



Kenneth R. Shemin

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
6th DIVISION**

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

BUMBLE BEE FOODS, LLC

Defendant.

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT**

Case No. CV14-930-6

Pursuant to Arkansas Rule of Civil Procedure 34, Plaintiff propounds the following Requests for Production of Documents on Defendant, Bumble Bee Food, LLC.

DEFINITIONS

- A. "Complaint" means the Class Action Complaint filed on May 22, 2014 in this action.
- B. "Concern" or "concerning" means consisting of, relating to, referring to, reflecting, or being in any way legally, logically, or factually connected with the matter discussed.
- C. "You" or "your" means Defendant, its parent companies and its respective subsidiaries, including, but not limited to divisions, subdivisions, practice groups, departments, affiliates, predecessors, successors, joint ventures, present and former officers, directors, partners, principals, employees, representatives, agents, attorneys, advisors, and all other persons acting or purporting to act on its behalf. This definition includes your brands Beach Cliff®, Brunswick® and King Oscar®.
- D. "Person" or "persons" means any natural person or any proprietorship, corporation, joint venture, or other business, legal, or governmental entity or association. Person includes, but is not limited to, your current and former employees.

E. "Food Products" means all of your food products, containing Product Claims.

F. "Label" means the principal display panel, the alternate principal display panel and the information panel, as defined by 21 C.F.R. §§ 101.1, 101.2, for your Food Products.

G. "Health Claim" means any claim made on your labels that expressly or by implication (including "third party" references, written statements, symbols, or vignettes) characterizes the relationship of any substance to a disease or health-related condition.

H. "Implied Health Claim" means those statements, symbols, vignettes, or other forms of communication on your labels that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the food and a disease or health-related condition.

I. "Drug Claim" means representations on your labels that a food product is intended for use in the cure, mitigation, treatment, or prevention of disease.

J. "Product Claims" means your allegedly unlawful product labeling representations regarding your food products as described in the Complaint. Product Claims, includes but is not limited to, the following representations on your labels:

1. "rich in" natural Omega-3;
2. "excellent source" of Omega-3;

This definition is nonexclusive and is meant to encompass all *substantially similar* labeling representations.

K. "Relevant products" means your food products that contain Product Claims on their labels.

L. "FDA" means the Federal Food and Drug Administration.

M. "FDCA" means the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.*

N. "Document" or "documents" means any and all writings of any kind as said term

is defined in Ark. R. Civ. Proc. 34 and shall include the original and each non-identical copy or draft thereof. The term document shall also include every other means by which information is recorded or transmitted, including, but not limited to, electronic mail, internet postings, tape recordings, video recordings, microfilms, punch cards, computer magnetic tape, computer disks, computer programs, storage tapes, printouts, data processing records, and the written information necessary to understand and use such information. A draft or non-identical copy is a separate document within the meaning of this term.

O. "Communications" means documents concerning or showing the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether effected through oral, written, telephonic, electronic, or any other means, including, but not limited to, documents, face-to-face meetings, telephone conversations, electronic mail, or text messaging.

INSTRUCTIONS

A. Unless stated otherwise, the time period covered by these interrogatories is eight (8) years preceding the filing of the Complaint in this action to the present.

B. All definitions and instructions set forth in Rules 26 and 34 of the Arkansas Rules of Civil Procedure apply to all Requests for Production herein.

C. Pursuant to Ark. R. Civ. Proc. 34, the documents shall be produced in the manner in which they were kept in the usual course of business, or shall be organized and labeled to correspond with the categories in these requests. If there are no documents responsive to a request, please so indicate.

D. You are required to produce all the requested documents which are in your possession, custody or control, including (by way of illustration only and not limited to) documents in the possession, custody or control of you or your affiliates; your merged and acquired predecessors; your present and/or former directors, officers, partners, employees,

accountants, attorneys and/or other agents; your present and/or former independent contractors over which you have control; and/or any other person acting on your behalf.

E. If you withhold any documents called for by a Request for Production on the ground of attorney-client privilege, the attorney work product doctrine, or any other privilege or doctrine, provide sufficient information to permit Plaintiff's counsel to determine whether protection from production is warranted.

F. If any document is known to have existed but has been destroyed, identify each such document by providing its date, author, recipient(s), subject matter, the reason for its destruction, and the person(s) responsible for causing it to be destroyed.

G. These requests shall be deemed to be continuing. Any information or documents responsive to these requests that you acquire at any time between when you respond to these requests and the time of trial must be provided to Plaintiff within a reasonable time after you acquire the information.

H. The requested documents and information should be produced in both "hard copy" document form and, to the extent available, in an electronic format (e.g., Excel or searchable PDF) that allows for the searching, sorting, and grouping of the data and other information contained therein.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. An example of all labels you have used on your Food Products.
2. All prior drafts or proofs of any label produced in response to document request number 1.
3. A copy of each webpage, in PDF, that has been on your websites.
4. All documents that you relied upon, including, but not limited to: scientific studies, research, government reports, and nutritional data to support your Product Claims.

5. All documents concerning the decision to place the Product Claims on your food products.

6. Documents sufficient to establish the dates on which your labels were first produced and used on your food products.

7. All documents, including, but not limited to, scientific studies, research, government reports, and nutritional data that were relied upon to support the following statements and/or that formed the basis for making such statements on your labels and/or websites:

- “Rich in” natural Omega-3.
- “Excellent Source” of Omega-3.
- “Nourishing Lifestyles – Bumble Bee Promotes Healthy and Sustainable Lifestyles for Consumers – Bumble Bee’s core seafood products are an excellent and affordable source of protein, nutrients and Omega 3 fatty acids. The healthy profile of our product portfolio affords Bumble Bee a strong basis from which to support and encourage healthy consumer lifestyles.”
- “More and more research suggests that Omega-3’s may help: Promote heart health by reducing artery-clogging cholesterol and triglycerides (fats) in your bloodstream; Lower your risk of heart attack by regulating electrical activity; Protect against type-2 diabetes by positively influencing your metabolism and blood pressure; Protect you from certain cancers, including breast cancer and leukemia; Benefit your immune system and improve inflammatory diseases such as rheumatoid arthritis and psoriasis; Improve your mood and support mental health; Play a vital role in the development of your baby’s eyes and brain – very important for pregnant mothers.”
- “All that good stuff and more from the Omega-3’s in delicious fish. That’s right, fish are the best natural source of the Omega-3’s your body needs most. Especially coldwater fish such as brisling sardines, mackerel, herring, and salmon. Another big reason why nutritionists will tell you to eat more seafood – at least twice a week.”

8. All communications with the FDA relating to your statements concerning health benefits of your food products, including, but not limited to, the following statements on your labels and/or websites:

- “Rich in” natural Omega-3.
 - “Excellent Source” of Omega-3.
 - “Nourishing Lifestyles – Bumble Bee Promotes Healthy and Sustainable Lifestyles for Consumers – Bumble Bee’s core seafood products are an excellent and affordable source of protein, nutrients and Omega 3 fatty acids. The healthy profile of our product portfolio affords Bumble Bee a strong basis from which to support and encourage healthy consumer lifestyles.”
 - “More and more research suggests that Omega-3’s may help: Promote heart health by reducing artery-clogging cholesterol and triglycerides (fats) in your bloodstream; Lower your risk of heart attack by regulating electrical activity; Protect against type-2 diabetes by positively influencing your metabolism and blood pressure; Protect you from certain cancers, including breast cancer and leukemia; Benefit your immune system and improve inflammatory diseases such as rheumatoid arthritis and psoriasis; Improve your mood and support mental health; Play a vital role in the development of your baby’s eyes and brain – very important for pregnant mothers.”
 - “All that good stuff and more from the Omega-3’s in delicious fish. That’s right, fish are the best natural source of the Omega-3’s your body needs most. Especially coldwater fish such as brisling sardines, mackerel, herring, and salmon. Another big reason why nutritionists will tell you to eat more seafood – at least twice a week.”
9. All communications between you and the FDA concerning the Product Claims.
10. All documents pertaining to the nutrient content levels, including fat levels, in your Food Products.
11. All documents concerning your efforts to develop, market and sell your Food Products to consumers concerned with weight management, nutrition and/or heart health.
12. Any study, report, evaluation, assessment, analysis and/or any similar document concerning a consumer preference for food products containing advertisements concerning “health,” including but not limited, to the Product Claims.
13. Any study, report, evaluation, assessment, analysis and/or any similar document concerning consumer knowledge of purported health benefits of Omega-3s.

14. All documents concerning consumer willingness to pay a premium for food products with Product Claims.

15. Documents sufficient to show gross sales of your relevant Food Products broken down by quarter and by individual Food Product. This request seeks sales data beginning four years prior to the placement of the Product Claims on the particular Food Product.

16. An Excel spreadsheet showing the gross sales data produced in response to Document Request No. 15.

17. All documents concerning your efforts to comply with the FDCA and/or Sherman Law and any other state labeling requirements concerning making Product Claims.

18. All marketing and advertising materials concerning the promotion of the relevant Food Products.

19. All documents concerning nationwide and/or regional expenditures associated with the advertising and promotion of the relevant Food Products.

20. All documents, including but not limited to minutes of any meetings, relating to the profitability of the relevant Food Products.

21. All minutes of investor/shareholder conference calls hosted by you discussing the effect of the Product Claims on your profitability.

22. Copies of all quarterly and annual reports issued or made available by you to your investors discussing the Product Claims.

23. All documents concerning the projected profitability of the relevant Food Products.

24. All documents concerning regulatory compliance actions concerning the Product Claims including, but not limited to, FDA warning letters regarding the Product Claims made by you or other companies.

25. All documents sufficient to ascertain the prices, both wholesale and retail, of the relevant Food Products for each year of production and for the four years immediately preceding the year in which the Product Claims were added to the labels.

26. All documents concerning any analysis of the price or market share(s) of competitors' products, including, but not limited to, those competitors' products that have any similar Product Claims on their labels.

27. Documents sufficient to ascertain the cost associated with labeling the relevant Food Products for the last five (5) years.

28. All documents concerning deliberations by you to alter or remove the Product Claims from the labels.

29. All documents relating in any way to the issue of compliance with federal and Arkansas regulations relating to labeling the relevant Food Products.

30. All documents relating in any way to any internal analyses of your Product Claims for compliance with federal and Arkansas regulations.

31. All documents concerning communications between you and King Oscar regarding the Product Claims.

32. All documents supporting any asserted affirmative defenses.

33. Produce any and all documents provided by you to each expert you intend to call as a witness at the hearing on class certification or at the trial of this matter.

34. With respect to each expert identified in response to the Interrogatories, please produce:

- a. A copy of the expert's most recent curriculum vitae;
- b. A copy of any document, study, article, book, or any other material the expert reviewed, relied upon, referenced, or utilized in any fashion in forming his opinion;

- c. A list of the expert's publications or other writings; and
- d. A list of the experts' deposition and/or trial testimony in the last 10 years, including the case name, Court, case number and name of attorneys.

35. You are requested to produce for inspection and copying all documents which you or any witness will use or refer to at the Class Certification hearing or at trial in this cause, or any exhibit you intend to use at the Class Certification hearing or at trial in this cause.

Dated: June 5, 2014

Respectfully submitted,



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Telephone: (501) 374-1058
Facsimile: (501) 374-2222

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been properly served upon Defendant by serving same with the Complaint and Summons through service of process on this 5th day of June, 2014.

The Corporation Trust Company
Agent of Service for Bumble Bee Foods, LLC
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801



Kenneth R. Shemin

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
6TH DIVISION**

RONALD A. BENNETT, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BUMBLE BEE FOODS, LLC,

Defendant.

NOTICE OF FILING OF NOTICE OF
REMOVAL

CASE NO. CV14-930-6

PLEASE TAKE NOTICE that on July 10, 2014, defendant Bumble Bee Foods, LLC filed a Notice of Removal removing this action to the United States District Court for the Western District of Arkansas. A copy of the Notice of Removal is attached. The Notice of Removal and all exhibits will be served on all counsel of record. Furthermore, pursuant to 28 U.S.C. § 1446(d), this matter shall proceed no further unless and until this case is remanded to this Court by the United States District Court.

Dated: July 10, 2014

Respectfully submitted,

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Little Rock, AR 72201-2893
Tel.: 501.375.9131
Fax: 501.375.1309

Attorneys for Defendant
BUMBLE BEE FOODS, LLC



CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July 2014, a copy of the foregoing Notice of Filing of Notice of Removal was sent via First Class, U.S. Mail, to plaintiff's attorneys at the following address:

Kenneth R. Shemin
Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway
Suite 603
Rogers, Arkansas 72758

Amy Lee Stewart

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
6TH DIVISION**

RONALD A. BENNETT, JR., individually and
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Plaintiff,

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Respectfully submitted,

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Attorneys for Defendant
BUMBLE BEE FOODS, LLC

EXHIBIT

C

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July 2014, a copy of the foregoing Notice of Filing of Notice of Removal was sent via First Class, U.S. Mail, to plaintiff's attorneys at the following address:

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Suite 603
Rogers, Arkansas 72758

Thomas P. Thrash
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Amy Lee Stewart